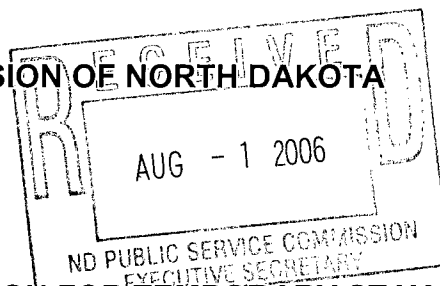


**BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA**



Capital Electric Cooperative, Inc. )  
)  
Complainant, )  
)  
vs. )  
)  
Montana-Dakota Utilities Co., a )  
Division of MDU Resources Group, Inc.)  
)  
Respondent. )

**MOTION FOR TEMPORARY STAY**

Case No. PU-06-278

Montana-Dakota Utilities Co., a division of MDU Resources Group, Inc. ("Montana-Dakota"), moves the North Dakota Public Service Commission ("Commission" or "PSC") for a temporary stay of this proceeding pending an order of the court in the appeal Montana-Dakota Utilities Co. v. North Dakota Public Service Commission, et al, Burleigh County Civil No. 06-C-1177 ("Boulder Ridge Appeal").

The claims before the Commission in this proceeding are similar to those presented to the Commission in Case No. PU-05-551 which is the subject of the Boulder Ridge appeal. A primary defense of Montana-Dakota is that Montana-Dakota, and not Capital Electric Cooperative ("CEC"), holds a franchise from the City of Bismarck to provide electric distribution service in Promontory Point III. Accordingly, under Bismarck City Ordinance 10-11-01, CEC is legally prohibited from providing electric distribution service in Promontory Point III. Montana-Dakota contends this is a threshold question and the Commission cannot exercise its jurisdiction under N.D.C.C. Chapter 49-03 in a manner that interferes with the City of Bismarck's franchise of electric service areas within the City of Bismarck. N.D. Const. art. VII, § 11; N.D. Const. art. XII, § 10; N.D.C.C. § 49-03-06(8); Western Electric Co. v. City of Jamestown, 47

N.D. 157, 181 N.W. 363 (N.D. 1921); Chrysler Light and Power Co. v. City of Belfield, 58 N.D. 33, 224 N.W. 871 (N.D. 1929); Public Service Commission v. City of Williston, 160 N.W.2d 534 (N.D. 1968); Montana-Dakota Utilities Co. v. Divide County School District No. 1, 193 N.W.2d 723 (N.D. 1971).

In its decision in Case No. PU-05-0551, the Commission determined it could not reconcile its authority under the Territorial Integrity Act ("TIA") with the franchise authority of the City of Bismarck without direction from the courts. The courts will provide that direction in the Boulder Ridge Appeal and will likely require the Commission to give consideration in some manner to the City's franchise authority. In its recent order granting a stay of the PSC's order in Case No. PU-05-0551 pending the Boulder Ridge Appeal, the District Court made a preliminary finding, without prejudicing the appeal, that there was a substantial probability that Montana-Dakota may prevail in the Boulder Ridge appeal. In consideration of that substantial probability, the PSC and the parties should have the benefit of the Court's decision in the Boulder Ridge Appeal prior to the hearing in this case. Conducting discovery and a hearing in this proceeding without the benefit of direction from the court in the Boulder Ridge Appeal would be a waste of resources for both the parties and the PSC.

In its response to Montana-Dakota's request for a writ of prohibition in Burleigh County Civil No. 06-C-1290, the PSC suggested Montana-Dakota's request should have been instead presented to the PSC in the form of a motion for a continuance. N.D. Admin C, § 69-02-04-03, however, provides that a motion for a continuance be made after a hearing is scheduled. In this situation it is more appropriate to stay this proceeding before the Commission engages in the exercise of establishing a hearing

date and issuing a notice of hearing with specification of hearing issues. Montana-Dakota submits good cause exists for such a stay and requests the issuance of a stay pending an order by the court in the Boulder Ridge Appeal.

Dated this 1<sup>st</sup> day of August, 2006.

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

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