

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.,

Case No. 08-06-C-1290

Petitioner,

vs.

North Dakota Public Service Commission,

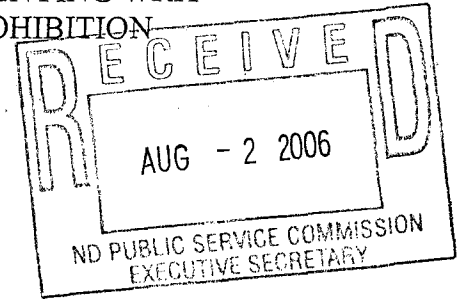
ORDER DENYING WRIT
OF PROHIBITION

Respondent,

vs.

Capital Electric Cooperative,

Amicus Curiae,



The Petitioner, Montana Dakota Utilities Co., (MDU) by and through its legal counsel, Attorney Daniel Kuntz, has petitioned the Court for the issuance of a Writ of Prohibition, directing the Public Service Commission, State of North Dakota, in Public Service Commission Case No. PU-06-255, to refrain and desist from any further proceedings in said case until such time as a final nonappealable order is issued in Civil No. 06-C-1177.

The North Dakota Public Service Commission by and through its legal counsel, Attorney William C. Binek, has filed the resistance of said respondent, alleging and arguing to the Court that the Public Service Commission is within its statutory authority to proceed with its proceeding in Action PU-06-255. Each of the parties have filed with the Court their respective briefs and supplemental documentation, and the Court has taken judicial notice of the contents of the administrative appeal now pending before this Court in Burleigh County District Court File 06-C-1177. In addition thereto, the Court does take judicial notice of the

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Clk. of Crt. Burleigh Co.

decision of this Court in Burleigh County District Court Case No. 05-C-2303, as to the validity of an existing franchise, issued by the City of Bismarck, North Dakota.

DECISION

Section 32-35-01, N.D.C.C., grants to the Court jurisdiction to issue a Writ of Prohibition so as to prohibit any tribunal, corporation, board or person when their proceedings are without or in excess of the jurisdiction afforded them. However, a Writ of Prohibition may be issued only when there is not a plain, speedy, and adequate remedy in the ordinary course of law.

The pending Complaint before the North Dakota Public Service Commission and encaptioned Capital Electric Cooperative, Inc., Complainant, vs. Montana Dakota Utilities, Co., a division of MDU Resources Group, Inc., Respondent, Case No PU-06-278, is a proceeding under Chapter 49-03 N.D.C.C., and more commonly referred to as the Territorial Integrity Act (TIA). Section 39-03-01.4 further grants to the North Dakota Public Service Commission express authority to enforce the provisions of 49-03-01 to 49-03-01.5. The Complaint filed 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 facilities in Promontory Point III.

The Complaint does fall within the spectrum of authority granted by Title 49, N.D.C.C., and the North Dakota Public Service Commission by conducting its procedure and hearing upon said Complaint, is not exceeding its authority as authorized by statute.

Additionally, any administrative decision rendered by the North Dakota Public Service Commission in Case PU-06-255 is subject to administrative appeal as demonstrated by Burleigh County District Court File 06-C-1177.

The Supreme Court of North Dakota has recognized that a Writ of Prohibition is an extraordinary remedy to prevent an inferior body or tribunal from acting without or in excess of its jurisdiction, when there is not a plain, speedy and adequate remedy in the ordinary course of law. Old Broadway Corporation v. Backes, 450 N.W.2d 734, (ND 1990).

It is the determination of this Court that the Public Service Commission for the State of North Dakota and in its conduct and procedure in the pending Complaint in PU-06-255 has not exceeded its authority and that the Petitioner herein does have an adequate remedy to any adverse order issued by said Commission through the administrative appeal provided by Chapter 28-32, N.D.C.C.

IT IS THEREFORE THE ORDER OF THE COURT that the Petitioners Petition for a Writ of Prohibition directing the Public Service Commission for the State of North Dakota to refrain and desist from any further proceedings in Action PU-06-255, is herewith denied.

Dated this 26th day of July, 2006, at Mandan, North Dakota.

BY THE COURT:


DONALD L. JORGENSEN
DISTRICT JUDGE

C: Daniel Kuntz
William Binek
Carol Larson
Jerome Kettleon