

stay. Chapter 69-02-04 provides:

After hearings are scheduled, continuances may be granted by the commission for good cause. A motion for continuance must be in writing, unless made at the commencement of a hearing, and must be filed with the commission, and served on each party. . . .

(Emphasis added). After a hearing is scheduled, MDU may then make a motion for a continuance, which will be resisted by Capital due to the factual differences in the two cases.

Factual Differences

The present case, Case No. PU-06-278, should follow the normal procedure and a hearing should be scheduled. Even though there are some similarities, there are significant factual differences between the present case, Case No. PU-06-278, and the Boulder Ridge dispute, which require a hearing.

In the present case, Bismarck (City Commission) has not held a hearing or issued a “decision” concerning either party’s right to serve Promontory Point III as occurred in the Boulder Ridge dispute. The “Decision and Order” by the City Commission on Boulder Ridge states as follows:

“Based upon the Findings and the Conclusions, the Board of City Commissioners conclude that electric power service to part of Boulder Ridge First Addition to the City of Bismarck is property served by MDU, subject to CEC retaining any existing customers.” . . . (Emphasis added.)

That “decision” was not meant to resolve later disputes.

Furthermore, because Capital already serves Promontory Point I and II, Capital has facilities immediately adjacent to Promontory Point III. In contrast, MDU will have to run its facilities nearly a mile to connect to Promontory Point III. To the extent that the fact that MDU has no facilities near Promontory Point III, and that MDU's extension of its electric distribution lines into Promontory Point III interferes with and constitutes an unreasonable duplication of investment and services provided by Capital. The case is factually similar to Boulder Ridge, only the duplication and interference with Capital's system is even more egregious. Thus, the present case deserves a hearing in its own right in order to develop the facts and to resolve Capital's Complaint.

Conclusion

As stated above, MDU's Motion For Temporary Stay should be denied, for there is no procedure for the PSC to issue such a stay. Further, there are significant factual distinctions between the present case, Case No. PU-06-278, and the Boulder Ridge dispute. Thus, the PSC should follow normal procedure and the case should be scheduled for a hearing.

Dated this 8 day of August, 2006.

PRINGLE & HERIGSTAD, P.C.

By: 

Carol K. Larson - # 04406

Attorney's for Capital Electric Cooperative, Inc.

Pringle & Herigstad, P.C.

2525 Elk Drive

PO Box 1000

Minot, ND 58702-1000

(701) 852-0381