

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Capital Electric Cooperative, Inc. vs
Montana-Dakota Utilities Co./Promontory Point III
Complaint**

Case No. PU-06-278

ORDER

August 23, 2006

Preliminary statement

On June 30, 2006 Capital Electric Cooperative, Inc. (Capital) filed a Complaint alleging that Montana-Dakota Utilities Co. (Montana-Dakota) (1) intends to provide electric service in the Promontory Point III subdivision within the City of Bismarck and (2) such service threatens to interfere with the existing services provided by Capital within the City of Bismarck and unreasonably duplicates available services provided by Capital within the City of Bismarck.

On August 1, 2006 Montana-Dakota filed an Answer and a Motion for Temporary Stay in this matter pending an order of the court in the appeal in Montana-Dakota Utilities Co. v. North Dakota Public Service Commission, et al, Burleigh County Civil No. 06-C-1177 (Boulder Ridge Appeal). Montana-Dakota argues in its Motion that 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. Montana-Dakota argues that 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.

On August 8, 2006 Capital filed a Response in Opposition to MDU's Motion for Temporary Stay and moved the Commission to schedule a hearing in this matter. Capital argues in its Response that neither the North Dakota Administrative Code nor the Territorial Integrity Act sets forth any procedure for the Commission to issue a temporary stay. Capital states that Chapter 69-02-04 titled "HEARINGS" sets forth the procedure for continuance but no authorization is given to the Commission to order a temporary stay.

On August 11, 2006 Montana-Dakota filed a Reply Brief in Support of Motion for Stay arguing that Capital's objection on procedural grounds is "form over substance" and that it makes no sense to set a hearing only to continue the same simply to satisfy Capital's procedural objection.

Conclusion

The Commission does not have authority under either the North Dakota Administrative Code or the North Dakota Century Code to issue a temporary stay. North Dakota Administrative Code Section 69-02-04-03 provides that a motion for a

continuance can be made after a hearing is scheduled. The section states: "After hearings are scheduled, continuances may be granted by the commission for good cause."


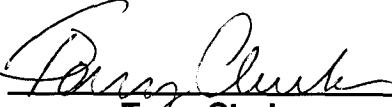

Therefore, the Commission makes its:

Order

The Commission Orders:

The Motion for Temporary Stay is DISMISSED.

PUBLIC SERVICE COMMISSION

		
Susan E. Wefald Commissioner	Tony Clark President	Kevin Cramer Commissioner