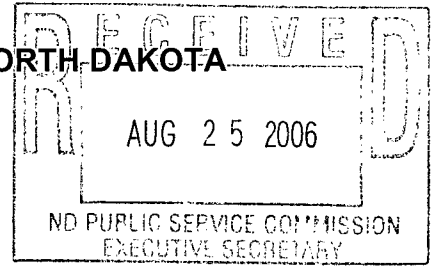


BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA



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

MOTION FOR CONTINUANCE

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 continuance of this proceeding pending an order of the court on 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").

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 in this proceeding is that Montana-Dakota, and not Capital Electric Cooperative ("CEC"), holds a franchise from the City of Bismarck to provide electric distribution in Promontory Point III. Accordingly, CEC is legally prohibited from providing electric distribution service in Promontory Point III. Montana-Dakota contends this is a threshold question for the Commission's determination and that 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 right to franchise 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 almost certainly 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 of 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 any regard, the PSC’s proper consideration of the City’s franchise in this proceeding remains in question until the Boulder Ridge appeal is decided. Conducting discovery and a hearing in this proceeding without receiving 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 provides that a motion for continuance be brought after a hearing is scheduled. In denying Montana-Dakota’s previous motion for a temporary stay, the Commission determined it could not stay or continue this proceeding until after

a hearing is scheduled. On August 23, 2006, the Commission issued its Notice setting a hearing for October 30, 2006. Although the District Court may issue its decision in the Boulder Ridge Appeal before October 30, 2006, the Courts' decision could change the issues for consideration in this proceeding. The parties should not be required to bear the expense of conducting discovery and preparing for hearing on issues that may change shortly before the hearing date. Montana-Dakota submits good cause exists for such a continuance and requests a continuance pending an order by the court in the Boulder Ridge Appeal.

Dated this 24<sup>th</sup> day of August, 2006.

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

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