

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

October 12, 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.

On August 23, 2006 the Commission adopted an Order dismissing the Motion for Temporary Stay. The Commission also issued a Notice of Hearing scheduling the hearing in the matter for October 30, 2006.

On August 25, 2006 Montana-Dakota filed a Motion for Continuance. Montana-Dakota again 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 also argues that in Case No. 05-551 the Commission determined it could not reconcile its authority under the Territorial Integrity Act with the franchise authority of the City of Bismarck without direction from the courts. Montana-Dakota argues that 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. It is Montana-Dakota's opinion that 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.

On September 6, 2006 Capital filed a Brief Opposing MDU's Motion for Continuance. Capital argues that the reasons asserted by Montana-Dakota are not good cause for continuance. Capital further argues that when a party to one Commission proceeding appeals the decision in that case, the Commission is not temporarily disabled from proceeding in similar cases while the appeal is pending. It is Capital's opinion that the Commission is able to hold a hearing, deliberate, and decide the Promontory Point III case in the normal course without wasting resources or incurring extraordinary burdens unique to this case and without waiting for the Boulder Ridge appeal to be decided. Capital believes the burdens of preparing for a hearing in this case are not as incredible as Montana-Dakota alleges. Capital also argues that similarity of issues in the Promontory Point III case to the Boulder Ridge case is not a reason for the Commission to refrain from holding a hearing and issuing a decision.

Conclusion

The Commission has authority under the North Dakota Administrative Code or the North Dakota Century Code to issue a continuance. 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."

The Commission finds that good cause exists to grant the Motion for Continuance. While the factual issues of the two cases may be different, it is the Commission's opinion that the legal issues are similar. The Commission believes it would be the best exercise of administrative economy to continue this proceeding until a final decision is reached in the Boulder Ridge Appeal.


Therefore, the Commission makes its:

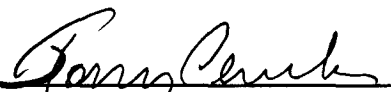
Order

The Commission Orders:

The Motion for Continuance is GRANTED.

PUBLIC SERVICE COMMISSION


Susan E. Wefald
Commissioner


Tony Clark
President


Kevin Cramer
Commissioner