



# MONTANA-DAKOTA

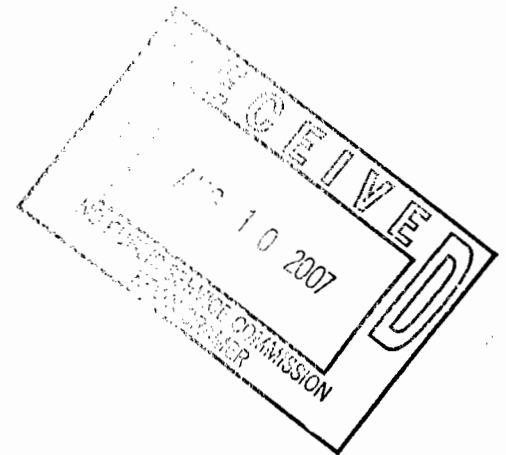
UTILITIES CO.

A Division of MDU Resources Group, Inc.

400 North Fourth Street  
Bismarck, ND 58501  
(701) 222-7900

Direct Dial No.  
(701) 530-1016  
(701) 530-1731 (fax)

August 9, 2007



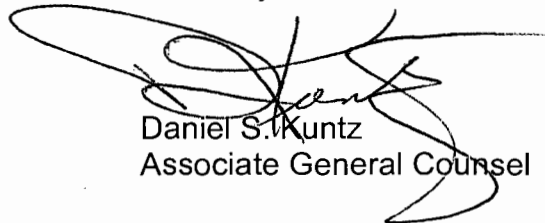
Ms. Illona Jeffcoat-Sacco  
Executive Secretary  
North Dakota Public Service Commission  
State Capital – Department 408  
600 East Boulevard Avenue  
Bismarck, ND 58505-0480

Re: Capital Electric Cooperative, Inc. vs. Montana-Dakota Utilities Co.  
Case No. PU-07-425

Dear Ms. Jeffcoat-Sacco:

Enclosed for filing are the original and seven copies of the Answer of Montana-Dakota Utilities Co., to the Complaint of Capital Electric Cooperative, Inc. in the above referenced proceeding. Also enclosed is an extra copy of the Answer. Please date stamp and return the extra copy for our files.

Sincerely,



Daniel S. Kuntz  
Associate General Counsel

DSK/arp  
Enclosures

cc: Carol K. Larson  
Donald Ball  
Frank Morehouse  
Jay Skabo



6. Montana-Dakota holds a general franchise to provide electric distribution service within the City of Bismarck.

7. Sonnet Heights 1<sup>st</sup> Replat subdivision is within the scope of Montana-Dakota's general franchise from the City of Bismarck.

8. Montana-Dakota has petitioned the Bismarck Board of City Commissioners to resolve any dispute and declare the rights between Montana-Dakota and CEC regarding the provision of electric distribution service under their respective franchises to Sonnet Heights 1<sup>st</sup> Replat subdivision.

9. North Dakota Century Code § 40-05-01(57) grants to cities the power to grant franchises and regulate the use of the same; such franchises not being irrevocable but subject to the regulatory powers of the governing body.

10. North Dakota Century Code § 40-05.1-06(10) grants to home rule cities the power to regulate franchises.

11. Article VII, Section 11 of the North Dakota Constitution provides that the power of the City of Bismarck to franchise the construction and operation of a public utility within the corporate limits of the City can not be abridged by the legislative assembly.

12. Nothing in Chapter 49-03 can limit the authority of the governing board of a city in exercising its franchising authority under section 40-05-01. N.D.C.C. § 49-03-06(8).

13. The Public Service Commission does not have authority to consider CEC's Complaint until after the City has acted to resolve any conflict in the provision of service to Sonnet Heights 1<sup>st</sup> Replat subdivision by Montana-Dakota and CEC in accordance with the City's regulation of its franchises.

14. The Public Service Commission does not have jurisdiction to restrain or enjoin Montana-Dakota from exercising its franchise authority to provide electric distribution services within Sonnet Heights 1<sup>st</sup> Replat subdivision.

15. Section 49-03-01.3, 49-03-01.4 and 49-03-05 are unconstitutional to the extent they would allow the Public Service Commission to interfere with the authority of the City of Bismarck to regulate its franchises or to the extent they would prevent, by order of the Commission, Montana-Dakota from exercise of its franchise granted by the City of Bismarck.

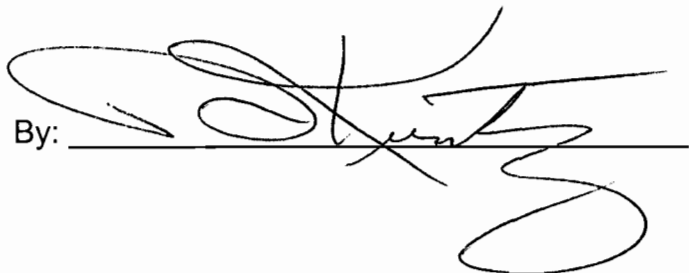
Therefore, Montana-Dakota requests the Public Service Commission to issue an order dismissing the Complaint of CEC against Montana-Dakota or staying further proceedings on such Complaint pending action by the Bismarck Board of City Commissioners on the regulation of electric service within Sonnet Heights 1<sup>st</sup> Replat subdivision by Montana-Dakota and CEC under their respective franchises.

Dated: August 9, 2007

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

Daniel S. Kuntz (ID# 03490)  
Associate General Counsel  
MDU Resources Group, Inc.  
1200 West Century Avenue  
P.O. Box 5650  
Bismarck, ND 58506-5650  
(701) 530-1016

By: \_\_\_\_\_

A handwritten signature in black ink, appearing to read 'D. Kuntz', is written over a horizontal line. The signature is stylized and cursive.

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Capital Electric Cooperative, Inc. vs.  
Montana-Dakota Utilities Co.

Case No. PU-07-425

AFFIDAVIT OF SERVICE BY FIRST CLASS MAIL

STATE OF NORTH DAKOTA

COUNTY OF BURLEIGH

Amy Prokop deposes and says that:

she is over the age of 18 years and not a party to this action and, on August 9, 2007, she deposited in the United States Mail, Bismarck, North Dakota, one envelope securely sealed and containing a photocopy of:

Answer

The envelope was addressed as follows:

Carol K. Larson  
Pringle & Herigstad, P.C.  
2525 Elk Drive  
P.O. Box 1000  
Minot, ND 58702-1000

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me  
this 9<sup>th</sup> day of August, 2007.

  
\_\_\_\_\_

  
\_\_\_\_\_  
Notary Public

