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**M E M O R A N D U M**

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**DATE:** October 19, 2007  
**TO:** Illona Jeffcoat-Sacco, Executive Secretary  
Public Service Commission  
**FROM:** Al Wahl *AW*  
**RE:** Capital Electric Cooperative, Inc. vs. Montana-Dakota Utilities Co.  
Promontory Point III  
Complaint  
Case No. PU-06-278  
OAH File No. 20070328

Capital Electric Cooperative, Inc. vs. Montana-Dakota Utilities Co.  
Sonnet Heights  
Complaint  
Case No. PU-07-425  
OAH File No. 20070330

Enclosed for filing is the Order for Discovery for the captioned matters.

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**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  
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Capital Electric Cooperative, Inc. vs.  
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**ORDER FOR DISCOVERY**

On September 26, 2007, Montana-Dakota Utilities Co., a division of MDU Resources Group, Inc. (Montana-Dakota) moved the North Dakota Public Service Commission (the PSC) for an order compelling Capital Electric Cooperative, Inc. (Capital) to respond to (that is, answer) certain interrogatories addressed to it by Montana-Dakota. Capital has responded to the motion on October 11, 2007, to contend (as it did for its objections to the interrogatories) that the information requested by the interrogatories is neither relevant evidence nor likely to lead to the discovery of relevant evidence.

Montana-Dakota asserts that the information sought is relevant to the PSC's consideration of a contention made by Capital in a similar prior proceeding that its facilities in the vicinity of the disputed annexed area were planned and built to provide service to the annexed area. Asserting also that those facilities are used to serve areas outside the City of Bismarck, Montana-Dakota argues that the number of customers and electric load added by Capital outside Bismarck is relevant to determining whether service extensions by Montana-Dakota within the annexed area will interfere with, or unreasonably duplicate, those facilities. Capital has not responded to dispute that it contended in a similar prior proceeding that its facilities in the vicinity of the disputed annexed area were planned and built to provide service to the annexed area, or that it

would not make the same or similar assertion as relevant evidence for these proceedings.

Responding to the motion, Capital states that it “will offer evidence about its existing facilities, and the presentation of that evidence might involve some historical background about the development of existing facilities.” The statement is taken as an acknowledgment that Capital may contend for these proceedings that its facilities in the vicinity of each annexed area in dispute were planned and built to provide service to the those areas.

Capital disputes the relevancy of the information requested by Montana-Dakota because it has not shown how historical data about the growth of Capital’s customers and sales of electric energy might be considered by the PSC for the evaluation of alleged interference or unreasonable duplication of Capital’s facilities in the vicinity of a disputed annexed area. While it is true that Montana-Dakota has not offered that explanation, even with only a layperson’s understanding the information requested by Montana-Dakota’s interrogatories appears to provide the bases for an evaluation of Capital’s utilization of the facilities.

Capital further asserts and argues that the information requested by Montana-Dakota is not relevant to the issues under N.D.C.C. § 49-03-01.3 as articulated by the PSC and by the North Dakota Supreme Court in controlling precedents, pointing to the PSC’s findings for the Boulder Ridge case, PU-05-551, and the decision of the North Dakota Supreme Court affirming the Commission’s order for the Boulder Ridge case, citing the court’s reference to its holding in *Cass County Elec. Coop. v. N.S.P.*, 419 N.W.2d 181, 186-187 (N.D. 1988), that “the PSC must look at the existing electric facilities that the rural electric cooperative and the utility have in place in the area and determine whether the extension of services into the area would constitute an unreasonable duplication of capital-intensive facilities and services provided by the other entity.” *Capital Elec. Coop. v. City of Bismarck*, 2007 ND 128, ¶ 33, 736 N.W.2d 788. Whether or not for its order in the Boulder Ridge case the PSC made any finding of fact regarding Capital’s use of facilities in the vicinity of the Boulder Ridge First Addition subdivision, and

consistent with the supreme court's holding in *Cass County Elec. Coop.*, referenced for its review of that order, if Capital may offer evidence of the utilization of its facilities in the vicinity of the Promontory Point III and Sonnet Heights 1st Replat subdivisions as relevant for the PSC's determinations to be made in these cases, then Montana-Dakota may discover information relevant to the evaluation of the utilization of those facilities. Accordingly, it is

Ordered, that Montana-Dakota may discover the information it has requested by its interrogatories dated August 29, 2007, numbers 3 through 6, served in PSC Case No. PU-06-278, and its interrogatories dated August 3, 2007, numbers 3 through 6, served in PSC Case No. PU-07-425, except that for each of interrogatories numbers 3 and 4 Capital may provide only the total number of electric services added in the designated areas without a separate showing of residential, commercial, and industrial services.

Dated at Bismarck, North Dakota, this 19th day of October, 2007.

State of North Dakota  
Public Service Commission

By:   
Al. Wahl, Administrative Law Judge  
Office of Administrative Hearings  
1707 North 9th Street  
Bismarck, North Dakota 58501  
Telephone: (701) 328-3260

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**CERTIFICATE OF SERVICE**

The undersigned certifies that true and correct copies of the **ORDER FOR DISCOVERY** were sent by regular mail on the 19th day of October, 2007, to:

Mr. Daniel S. Kuntz  
Associate General Counsel  
Montana-Dakota Utilities Co.  
P.O. Box 5650  
Bismarck, ND 58506-5650

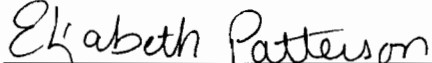
Mr. Jerome C. Kettleon  
Pearce & Durick  
P.O. Box 400  
Bismarck, ND 58502-0400

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

and that a true and correct copy of the above document was mailed, inside mail, at the State Capitol on the 19th day of October, 2007, to:

Mr. William W. Binek  
Public Service Commission  
600 East Boulevard Avenue, Dept. 408  
Bismarck, ND 58505-0480

OFFICE OF ADMINISTRATIVE HEARINGS  
Al. Wahl, Administrative Law Judge

  
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Elizabeth Patterson