

DONALD A. NEGAARD
JAMES E. NOSTDAHL
CAROL K. LARSON
DAVID J. HOGUE
REED A. SODERSTROM
BRENT M. OLSON
DEBRA L. HOFFARTH
SCOTT M. KNUDSVIG
RYAN D. SANDBERG
MATTHEW H. OLSON

ATTORNEYS LICENSED IN
NORTH DAKOTA
MINNESOTA
MONTANA



LAW OFFICES OF
PRINGLE & HERIGSTAD, P.C.

2525 ELK DRIVE
POST OFFICE BOX 1000
MINOT, NORTH DAKOTA 58702-1000
(701) 852-0381
FAX (701) 857-1361
E-mail: pringle@srt.com

Celebrating 100 Years of Service
1909 - 2009

OF COUNSEL
HERBERT L. MESCHKE
RETIRED
THOMAS A. WENTZ
MARK F. PURDY
JAN M. SEBBY

KENNETH G. PRINGLE
(1914-1983)
MITCHELL H. MAHONEY
(1929-1996)
ROGER O. HERIGSTAD
(1919-2003)

March 4, 2011

Executive Secretary
PUBLIC SERVICE COMMISSION
State Capitol – Department 408
600 East Boulevard Avenue
Bismarck, ND 58505-0480

MONTANA-DAKOTA UTILITIES CO. – CITY OF KENMARE, WARD COUNTY
PUBLIC CONVENIENCE & NECESSITY
CASE NO. PU 11-37

Enclosed for filing in the above matter are an original and seven copies of the Response of Burke-Divide Electric Cooperative, Inc., on the Application for Permanent Authority of Montana-Dakota Utilities Co. An electronic version of this document will also be sent to you on this date.

In paragraph V of Burke-Divide's Response, reference is made to a map marked as Exhibit 1. We would advise that this map is still being prepared and we will file it with the Commission as soon as we receive it.

Thank you.

Don Negaard

jt

Enclosures

cc/enc: Tamie A. Aberle, Montana-Dakota Utilities Co.
Burke-Divide Electric Cooperative, Inc., Attention Jason Brothen, Manager

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Montana-Dakota Utilities Co.
City of Kenmare – Ward County
Public Convenience & Necessity**

Case No. PU-11-37

**RESPONSE OF BURKE-DIVIDE ELECTRIC COOPERATIVE, INC.
ON THE APPLICATION FOR PERMANENT AUTHORITY
OF MONTANA-DAKOTA UTILITIES CO.**

Burke-Divide Electric Cooperative, Inc., responds to the Application for Permanent Authority filed by Montana-Dakota Utilities Co. (MDU), as follows:

I.

Burke-Divide Electric Cooperative, Inc., was not notified of the proposed extension of service in this matter until weeks after the line in question had been built and service was connected at the proposed location.

II.

The proposed service extension is outside the city limits of Kenmare, North Dakota, and is located in Burke-Divide's service area. Burke-Divide Electric Cooperative, Inc., has been providing electric service in this area for a number of years and has power lines located in this area within a couple hundred feet from this location.

III.

The conduct of MDU in this matter is a perfect example of MDU continuing to encroach in the service area of Burke-Divide Electric Cooperative, Inc., in total indifference to the legal rights of Burke-Divide Electric Cooperative, Inc., and other similarly situated electric cooperatives as well as state law. Section 49-03-01.1 of the North Dakota Century Code states, as follows:

No electric public utility henceforth shall begin in the construction or operation of a public utility plant or system or extension thereof without first obtaining from the commission a certificate that public convenience and necessity require or will require such construction and operation, nor shall such public utility henceforth extend its electric transmission or distribution lines beyond or outside of the corporate limits of any municipality, nor shall it serve any customer where the place to be served is not located within the corporate limits of a municipality, unless and until, after application, such

electric public utility has obtained an order from the commission authorizing such extension and service and a certificate that public convenience and necessity require that permission be given to extend such lines and to serve such customer.

It is clear that MDU had no authority to build the line in question or to serve the load, as required by North Dakota law.

IV.

The application in question by MDU is incomplete in that it fails to show the date the City of Kenmare requested the service in question. The application also fails to show what authority the mayor of Kenmare had to act on behalf of the City of Kenmare on the date of the City Council's resolution authorizing the mayor to act on behalf of the City of Kenmare.

V.

MDU has provided the North Dakota Public Service Commission incorrect and inaccurate information in this matter. Exhibit A is incorrect. Enclosed is Exhibit 1 which is an accurate map.

Burke-Divide Electric Cooperative, Inc., respectfully requests a hearing in this matter and further requests an injunction against MDU from engaging in such conduct in the future in service areas of Burke-Divide Electric Cooperative, Inc.

Dated at Minot, North Dakota, this 4th day of March, 2011.

PRINGLE & HERIGSTAD, P.C.




By: Don Negaard, ND Bar ID #03598
Attorneys for Burke-Divide Electric
Cooperative, Inc.
2525 Elk Drive
P.O. Box 1000
Minot, ND 58702-1000
Telephone (701) 852-3081
Fax (701) 857-1361
donn@srt.com

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing Response of Burke-Divide Electric Cooperative, Inc., was mailed on the 4th day of March, 2011, to:

Tamie A. Aberle
Pricing & Tariff Manager
Montana-Dakota Utilities Co.
400 North 4th Street
Bismarck, ND 58501

A handwritten signature in black ink, appearing to be 'DN', written over a horizontal line.

Don Negaard