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**RECEIVED**

APR 01 2011

**PUBLIC SERVICE COMMISSION**

April 1, 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 Notice of Withdrawal of Montana-Dakota Utilities Co. An electronic version of this document will also be sent to you on this date.

Thank you.

Don Negaard

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Enclosures

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

**8**    **PU-11-37**    Filed: 4/1/2011    Pages: 4  
**Response of Burke-Divide Electric Cooperative, Inc.  
to Notice of Withdrawal**

**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 NOTICE OF WITHDRAWAL**  
**OF MONTANA-DAKOTA UTILITIES CO.**

Burke-Divide Electric Cooperative, Inc. (Burke-Divide), responds to the Notice of Withdrawal filed by Montana-Dakota Utilities Co. (MDU), as follows:

I.

Burke Divide hereby responds to MDU's "Notice of Withdrawal." In this case, MDU had requested to serve a load near Kenmare, North Dakota. The load is located outside the city limits of Kenmare and is in Burke-Divide's service area. MDU built the line to this load without a Certificate of Public Convenience and Necessity (PC&N).

II.

Burke-Divide agrees that the North Dakota Public Service Commission (PSC) only has the authority granted to it by the Legislature. The Legislature has granted PSC jurisdiction over public utilities that provide electrical service. N.D. CENT. CODE § 49-02-01(4).

III.

The cases cited by MDU involve disputes over rates between a city and an IOU. Chrysler Light & Power Co. v. City of Belfield, 58 N.D. 33, 224 N.W. 871 (N.D. 1929), involved service within the city limits of Belfield. City of Grafton v. Otter Tail Power Company, 86 N.W.2d 197 (N.D. 1957), also involved service within the city limits of Grafton. However, the issue in this case is not rates. The issue is PC&N.

IV.

Otter Tail Power Company v. North Dakota Public Service Commission, 354 N.W.2d 701, involved the question of jurisdiction of the PSC on an Indian Reservation and is not applicable to the situation at hand. MDU failed to cite applicable case law regarding the PSC's jurisdiction to issue a PC&N. The PSC has "jurisdiction to hear and determine an electric utility's application for a Certificate of Public Convenience and Necessity to extend


service to areas outside the corporate limits of a municipality." Capital Electric Cooperative, Inc. v. Public Service Commission, 534 N.W.2d 587, 591 (N.D. 1995). A customer's request for service by a public utility outside the city limits triggers the PSC's jurisdiction. Id. at 592.

V.

MDU cites North Dakota Century Code 49-02-01.1 for the proposition that the PSC does not have jurisdiction over municipal requests for power. MDU's cite is misplaced. This provision is relevant to utility companies owned and operated by a municipality. N.D.Cent. Code § 49-02-01.1. MDU is not owned or operated by the City of Kenmare. None of the case law cited by MDU stands for the proposition that the PSC lacks jurisdiction over requests of power from a municipality. In fact, Grafton specifically states this section "indicates an intention on the part of the Legislature to, in a large measure, withhold from the Public Service Commission jurisdiction and authority over public utilities owned and operated by the state." 86 N.W.2d 197, 202.

Dated at Minot, North Dakota, this 1st day of April, 2011.

PRINGLE & HERIGSTAD, P.C.



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CERTIFICATE OF SERVICE

A true and correct copy of the foregoing Response of Burke-Divide Electric Cooperative, Inc., was mailed on the 1st day of April, 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, consisting of several overlapping loops and a final horizontal stroke, positioned above a solid horizontal line.

Don Negaard