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November 6, 2012

RECEIVED

NOV 08 2012

Executive Secretary  
ND Public Service Commission  
State Capitol Building  
600 East Boulevard Avenue, Dept 108  
Bismarck ND 58505-0408

**PUBLIC SERVICE COMMISSION**

Re: Application for Approval of Amendment No. 1 to Service Area Agreement

MDU/Burke Divide Electric Cooperative and City of Kenmare, ND  
Case No. PU-12-231

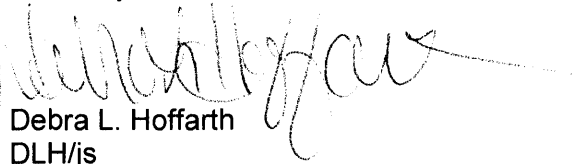
MDU and City of Kenmare  
Service Area Agreement, File No. PU-12-232

Dear Gentlemen:

Enclosed is the original and seven copies of Joint Application for Approval of Amendment No. 1 to Kenmare Service Area Agreement., for approval of an amendment of the Service Area Agreement to between Montana-Dakota Utilities, City of Kenmare and Burke-Divide Electric Cooperative, Inc.

Please acknowledge receipt by stamping or initialing the duplicated copy of this letter attached hereto, and returning the same in the enclosed self-addressed stamped envelope.

Sincerely,



Debra L. Hoffarth  
DLH/js

Enclosure

cc Jason Brothen, Burke Divide Electric Cooperative, Inc.  
Daniel Kuntz, MDU Resources Group, Inc.  
Roger Ness, City of Kenmare  
Tami Aberle, MDU Utilities Company

14 PU-12-232 Filed: 11/8/2012 Pages: 11  
Joint Application for Approval of Amendment No. 1  
to Service Area Agreement

14 PU-12-231 Filed 11/08/2012 Pages: 11  
Joint Application for Approval of Amendment No. 1 to Service Area Agreement  
Montana-Dakota Utilities Co./ Burke-Divide Electric Cooperative, Inc.  
Debra Hoffarth, Pringle&Herigstad, P.C.

Montana-Dakota Utilities Co./ Burke-Divide Electric Cooperative,  
Inc.  
Debra Hoffarth, Pringle&Herigstad, P.C.

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**MDU/Burke-Divide Electric Cooperative, Inc.  
City of Kenmare  
Service Area Agreement**

**Case No. PU-12-231**

**Joint Application for Approval of Amendment No. 1  
to Kenmare Service Area Agreement**

Burke-Divide Electric Cooperative, Inc. (Burke-Divide), an electric cooperative organized under N.D.C.C. Chapter 10-13, and Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. (Montana-Dakota), an electric public utility, submits this joint application for approval of an Amendment No. 1 to the Kenmare Service Area Agreement pursuant to N.D.C.C. § 49-03-06. The Order Approving Electric Service Area Agreement was signed by the Public Service Commission on August 13, 2012. The Amendment No. 1 to Kenmare Service Area Agreement, which accompanies this Application, was entered into by Burke-Divide and Montana-Dakota, as electric providers in compliance with the provisions of N.D.C.C. § 49-03-06 to establish service areas and to designate service locations to be served by Burke-Divide and Montana-Dakota, within the surrounding area. Amendment No. 1 amends the primary term of the Service Area Agreement from 10 years to 20 years. The Service Area Agreement, as amended by Amendment No. 1, complies with N.D.C.C. § 49-03-06 and is in the public interest because it will: (1) avoid misunderstanding and disagreement over areas to be served by each party; (2) accomplish the legislative intent of N.D.C.C. 49-03-06 to encourage harmony and operational efficiency among electric providers, promote safety, discourage unreasonable duplication of electric facilities, assure adequate and

reliable electric service and provide antitrust immunity to the electric providers; and (3) provide both parties with equitable participation in the provision of electric distribution service within undeveloped areas in Ward County during the term of the Agreement.

Burke-Divide Electric Cooperative, Inc., and Montana-Dakota, request the Public Service Commission, after Notice as provided in N.D.C.C. § 49-03-06(4), approve Amendment No. 1 to the Kenmare Service Area Agreement after finding the Agreement in Compliance with N.D.C.C. § 49-03-06 and in the public interest.

Notices regarding this mater should be directed to:

Burke-Divide Electric Cooperative Jason Brothen, General Manager PO Box 6 Columbus MN 58727 Telephone: (701) 939-6671 <a href="mailto:jason@bdec.coop">jason@bdec.coop</a>	Debra L. Hoffarth Pringle & Herigstad, PC 2525 Elk Drive, PO Box 1000 Minot ND 57012 Telephone: (701) 852-0381 <a href="mailto:dhoffarth@srt.com">dhoffarth@srt.com</a>
Montana-Dakota Utilities Co. Tamie Aberle Regulatory Affairs Manager 400 North 4 <sup>th</sup> Street Bismarck ND 58501 Telephone: (701) 222-7856 <a href="mailto:tamie.aberle@mdu.com">tamie.aberle@mdu.com</a>	Daniel S. Kuntz Associate General Counsel MDU Resources Group, Inc. PO Box 5650 Bismarck ND 58502-5650 Telephone: (701) 530-1016 <a href="mailto:dan.kuntz@mduresources.com">dan.kuntz@mduresources.com</a>

Dated this 4<sup>th</sup> day of October, 2012.

Respectfully submitted,

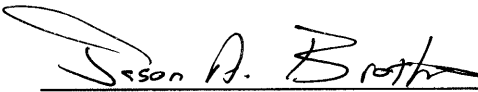
**Montana-Dakota Utilities Co.,  
a Division of MDU Resources Group, Inc.**



By Tamie Aberle, Regulatory Affairs Manager

Dated this 8 day of October, 2012.

Respectfully submitted,  
**Burke-Divide Electric Cooperative, Inc.**

A handwritten signature in black ink, appearing to read "Jason A. Brothen". The signature is written in a cursive style with a large initial "J" and "B".

---

By Jason Brothen, General Manager

**AMENDMENT NO. 1 TO  
Kenmare Service Area Agreement**

This **AMENDMENT No. 1** to the **Service Area Agreement** is entered into by and between **Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.** (“Montana-Dakota”), and **Burke-Divide Electric Cooperative** (“Burke-Divide”). Montana-Dakota and Burke-Divide being referred to together as the “**PARTIES**” and individually as “**PARTY**”.

**WHEREAS**, the **PARTIES** entered into a Service Area Agreement (“**AGREEMENT**”) designating the respective service areas of each of the **PARTIES** within the geographic scope of the **AGREEMENT** including the City of Kenmare, North Dakota, and

**WHEREAS**, the **PARTIES** desire to amend the **AGREEMENT** as and to the extent provided in this Amendment.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound by this Amendment, the **PARTIES** covenant and agree as follows:

1. Paragraph 15 of the **AGREEMENT** shall be amended to provide as follows:

This Agreement shall continue in effect for 20 years from the Effective Date of the franchises issued by the City of Kenmare as provided in paragraph 16. Thereafter, this Agreement shall automatically renew for successive five-year terms unless either Party provides written notice to the other Party of its intention to terminate this Agreement at least 180 days prior to the end of the initial or any extended term. This Agreement may be terminated at any time by the mutual written agreement of the Parties.

That the intent of the Parties is to equitably share the growth of new Service Locations within undeveloped areas that are annexed to the City. Not less than 210 days prior to the end of the initial or any extended term, either party can request to adjust the service areas within this service area agreement effective at the end of the initial term, or any extended term, and if an agreement can't be reached, that either party can terminate the agreement

as set forth above or request that a mediator be appointed to settle the dispute as set forth in paragraph 18 of this Agreement.

2. Paragraph 16 of the **AGREEMENT** shall be amended to provide as follows:

The parties shall request the City of Kenmare to issue new 20-year electric utility franchises to each party authorizing service in the service areas and Service Locations provided in this Agreement, as such areas are within or may be annexed to the City of Kenmare, and otherwise consistent with the terms of this Agreement in substantially in the form attached hereto. Neither Party will interfere with nor object to the term nor scope of the other Party's franchise with the City of Kenmare as it may pertain to provision of electric distribution service within the other Party's service area consistent with the terms of this Agreement. Nothing in this provision is intended to prohibit either Party from objecting to the terms and conditions of the other Party's franchise which could unreasonably damage or harm the objecting Party's operations or the objecting Party's service area as designated in the Agreement.

3. Except as expressly amended herein, all other terms, covenants and conditions contained in the **AGREEMENT** shall continue to remain unchanged and in full force and effect and are hereby ratified and confirmed.
4. This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute but one and the same agreement. Counterpart signatures may be delivered by facsimile or electronic transmission, each of which shall have the same force and effect as an original signed copy.
5. Each signatory to this Amendment represents that he/she has the authority to execute and deliver this Amendment on behalf of the party set forth above his/her signature.

**IN WITNESS WHEREOF** the **PARTIES** have caused this instrument to be executed, the day and year indicated below.

**Montana-Dakota Utilities Co.,**  
**a Division of MDU Resources Group, Inc.** <sup>DK</sup>

By: *Del S. Gehl*

Title: *PRESIDENT & CEO*

Date: *8/30/2012*

**Burke-Divide Electric Cooperative, Inc.**

By: *Jason A. Brothman*

Title: *General Manager*

Date: *8/17/2012*

ORDINANCE NO. 14.0105

AN ORDINANCE GRANTING TO MONTANA-DAKOTA UTILITIES CO., A DIVISION OF MDU RESOURCES GROUP, INC., A CORPORATION, IT SUCCESSORS AND ASSIGNS, THE FRANCHISE AND RIGHT TO CONSTRUCT, MAINTAIN AND OPERATE, WITHIN AND UPON, IN AND UNDER THE STREETS, ALLEYS AND PUBLIC GROUNDS OF THE

CITY OF KENMARE, WARD COUNTY, NORTH DAKOTA

AN ELECTRIC DISTRIBUTION SYSTEM FOR TRANSMITTING AND DISTRIBUTING ELECTRICITY FOR PUBLIC AND PRIVATE USE.

BE IT ORDAINED BY

The City Council of the City of Kenmare, North Dakota

SECTION I. For convenience, herein, said municipal corporation is designated and referred to as "Municipality" and Montana-Dakota Utilities Co. is designated and referred to as "Grantee." Any reference to either includes their respective successors and assigns.

SECTION II. There is hereby granted to Grantee, its successors and assigns, subject to the limitations herein stated, the right and franchise to occupy and use the streets, alleys and public grounds of the Municipality as now, or hereafter constituted, for the purpose of constructing, installing, maintaining, and operating, within, upon, in and under the same, an electric distribution system for transmitting and distributing electricity for all purposes, including public and private use.

To encourage harmony and operational efficiency in the provision of electric distribution service in the Municipality, to promote safety and discourage unreasonable duplication of electric facilities, to assure adequate and reliable service for all consumers within the Municipality, and provide franchise grantees with equitable participation in the provision of electric distribution service within undeveloped areas annexed to the Municipality during the terms of this Franchise, the authority granted by this Franchise to Grantee is limited to the use of the Municipality's streets, alleys, bridges and public grounds for the purpose of distributing electric energy for public and private use within the service areas and to the service locations of the Grantee as designated and agreed to in the Service Area Agreement executed by Burke-Divide Electric Cooperative, Inc. and Grantee and attached as Exhibit A to this Resolution, including any amendments or modifications to the Service Area Agreement as agreed and approved pursuant to the terms of the Service Area Agreement. The Grantee shall have all the rights, privileges, and obligations to provide electric distribution service within such service areas and to such service locations as stated in the Service Area Agreement. This limitation shall not restrict the Grantee's right to occupy and use the streets, alleys and public grounds of the Municipality anywhere within the Municipality to construct, operate, and maintain transmission and distribution line facilities for the purpose of providing adequate electric service within the service areas and to the service locations of the Grantee under the Service Area Agreement as provided in paragraph 12 of such Agreement.

SECTION III. Grantee shall maintain an efficient distribution system for furnishing electricity for public and private use at such rates as may be approved by the Public Service Commission of the State of North Dakota and under such orders, rules or regulations as may be issued by a federal or state agency having jurisdiction thereof.

SECTION IV. This franchise shall not be exclusive and shall not be construed to prevent the Municipality from granting to any other party that is not an electric service provider the right to use the streets, alleys, and public grounds of the Municipality for purposes deemed necessary by the Municipality.

SECTION V. The Municipality reserves any right it may have, under its police power, or otherwise, to control or regulate the use of said streets, alleys, and public grounds by Grantee. The Municipality will give Grantee reasonable notice of plans for improvements of streets, alleys and public grounds where the Municipality has reason to believe Grantee's electric distribution system may be affected by the improvement. If during the period of this franchise the Municipality shall lawfully elect to alter, or change the grade of any street, alley or public grounds, Grantee, upon reasonable notice by the Municipality, at its own expense may remove, relocate or rearrange its electric distribution facilities that would be a substantial interference with the change to the street, alley or public grounds, provided, however, if relocation, removal or rearrangement of any electric distribution facility is made necessary to accommodate construction of a project on a federal aid highway or extension thereof within the Municipality, Grantee shall be paid the costs of the relocation, removal or rearrangement in accordance with the laws of the State of North Dakota. The City will not interfere with Grantee carrying on its business in accordance with the franchise hereby granted.

SECTION VI. Unless otherwise provided in any permit or regulation of the Municipality, Grantee may trim trees and shrubs in and over the streets, alleys and public grounds to the extent Grantee determines is necessary to avoid interference with the construction, installation, operation, maintenance and repair of the electric distribution facilities, provided Grantee shall hold the Municipality harmless from any liability arising therefrom.

SECTION VII. Grantee shall indemnify and save and hold the Municipality harmless from any loss or damage due to the construction, installation, and maintenance of its distribution system, and its use of the streets, alleys, and public grounds of the Municipality.

SECTION VIII. Grantee shall have the right to assign this franchise to any party, or corporation, but all obligations of Grantee hereunder shall be binding upon its successors and assigns.

SECTION IX. Within thirty (30) days after Grantee is notified of approval of this franchise, Grantee shall file with the clerk or auditor of the Municipality its written acceptance of this franchise.

SECTION X. This franchise shall continue and remain in full force and effect for a period of ~~ten (10)~~ years from the date upon which this franchise shall become effective as provided by law. Twenty (20)

Section XI. Termination of Prior Franchise. At the request of the Grantee, the franchise approved April 12, 1999 granting the Grantee the right to construct, maintain and operate an electric distribution system in the Municipality for a term of twenty (20) years, and any other prior franchise granting the Grantee the right to construct, maintain and operate an electric distribution system in the Municipality, are hereby terminated and the Grantee's right to construct, maintain and operate an electric distribution system in the Municipality shall hereafter be governed by this Franchise.

Passed the 14<sup>th</sup> day of May, 2012.

Approved this ~~14<sup>th</sup>~~  
13<sup>th</sup> day of ~~May~~  
AUGUST, 2012.

ATTEST: Barb Weidmer  
Auditor

Roger Ness  
Mayor/Chairman

(Seal of the Municipality)

ACCEPTANCE OF FRANCHISE

Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., a corporation, hereby accepts the terms and conditions of that certain Ordinance No. \_\_\_\_\_ enacted by the governing body of the City of \_\_\_\_\_, \_\_\_\_\_ County, North Dakota, the same being an ordinance granting to said Company, its successors and assigns, a franchise to construct, maintain and operate, within and upon, in and under the streets, alleys and public grounds of said City, a gas distribution system for transmitting and distributing natural or manufactured gas, or a mixture of both, for public and private use, which ordinance was duly and finally passed, adopted and approved by the governing body of said City on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Montana-Dakota Utilities Co.  
A Division of MDU Resources Group, Inc.

By \_\_\_\_\_  
President and Chief Executive Officer

ATTEST:

\_\_\_\_\_  
Secretary

\*\*\*\*\*

I, the undersigned, the duly elected, qualified and acting Auditor of the City of \_\_\_\_\_, State of North Dakota, do hereby certify that I received the within Acceptance of Franchise on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, and on said date duly filed the same in my office.

\_\_\_\_\_  
Auditor

(SEAL OF MUNICIPALITY)

