



# MONTANA-DAKOTA

UTILITIES CO.

A Division of MDU Resources Group, Inc.

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

June 27, 2012

Executive Secretary  
North Dakota Public Service Commission  
State Capitol Building  
Bismarck, ND 58505-0480

Re: Application for Approval of Service  
Area Agreement & Request for a Certificate  
of Public Convenience & Necessity-  
Mandan, North Dakota  
Case No. PU-12-\_\_\_\_\_  
Case No. PU-12-\_\_\_\_\_

Enclosed are the original and seven copies of a joint Application made by Mor-Gran-Sou Electric Cooperative ("Mor-Gran-Sou") and Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. ("Montana-Dakota"), for approval of a Service Area Agreement to establish service areas and to designate service locations to be served by Montana-Dakota and Mor-Gran-Sou within the City of Mandan and the surrounding area. The City of Mandan approved the Service Area Agreement on June 5, 2012.

Montana-Dakota also requests the Commission issue a Certificate of Public Convenience & Necessity authorizing it to extend service to locations within the Montana-Dakota service area set forth in the Agreement.

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

Sincerely,

Tamie Aberle  
Regulatory Affairs Manager

#### Attachments

cc: Dan Kuntz  
Don Franklund  
Craig Lohstreter

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

Montana-Dakota Utilities Co.  
Mandan Area – Service Area Agreement  
Public Convenience & Necessity

Case No. PU-12-\_\_\_\_\_

**Application for Approval of a Certificate of Public Convenience & Necessity  
Associated with the Mandan Area Service Agreement**

Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., (“Montana-Dakota”), an electric public utility, requests that the Commission issue a Certificate of Public Convenience and Necessity to Montana-Dakota for the extension of electric distribution facilities and electric distribution service to provide electric service to customers in areas around the city of Mandan, North Dakota as established in the service area agreement negotiated with Mor-Gran Electric Cooperative filed separately on this date.

Notices regarding this matter should be directed to:

**For Montana-Dakota Utilities Co.:**

Tamie Aberle  
Regulatory Affairs Manager  
Montana-Dakota Utilities Co.  
400 North Fourth Street  
Bismarck, ND 58501  
Telephone: (701) 222-7856  
[tamie.aberle@mdu.com](mailto:tamie.aberle@mdu.com)

Daniel S. Kuntz  
Associate General Counsel  
MDU Resources Group, Inc.  
PO Box 5650  
Bismarck, ND 58502-5650  
Telephone: (701) 530-1016  
[Dan.kuntz@mduresources.com](mailto:Dan.kuntz@mduresources.com)

**For Mor-Gran-Sou Electric Cooperative:**

Don Franklund  
Co-General Manager/CEO  
Mor-Gran-Sou Electric Cooperative  
P.O. Box 297  
Flasher, ND 58535  
Telephone: (701) 597-3301

Dated this 27<sup>th</sup> day of June, 2012.

Respectfully submitted,

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



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By: Tamie Aberle  
Regulatory Affairs Manager

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

Mor-Gran-Sou Electric  
Cooperative/Montana-Dakota Utilities Co.  
Mandan Service Area Agreement

Case No. PU-12-\_\_\_\_\_

**Application for Approval of Service Area Agreement**

Mor-Gran-Sou Electric Cooperative, ("Mor-Gran-Sou Electric "), 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, submit this joint application for approval of a Service Area Agreement pursuant to N.D.C.C. § 49-03-06. The Service Area Agreement, which accompanies this Application, was entered into by Montana-Dakota and Mor-Gran-Sou Electric 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 Montana-Dakota and Mor-Gran-Sou Electric within the City of Mandan and the surrounding area. The Service Area Agreement 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 annexed to the City of Mandan during the term of the Agreement.

Montana-Dakota and Mor-Gran-Sou Electric request the Public Service Commission, after Notice as provided in N.D.C.C. § 49-03-06(4), approve the 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 matter should be directed to:

**For Montana-Dakota Utilities Co.:**

Tamie Aberle  
Regulatory Affairs Manager  
Montana-Dakota Utilities Co.  
400 North Fourth Street  
Bismarck, ND 58501  
Telephone: (701) 222-7856  
[Tamie.aberle@mdu.com](mailto:Tamie.aberle@mdu.com)

Daniel S. Kuntz  
Associate General Counsel  
MDU Resources Group, Inc.  
PO Box 5650  
Bismarck, ND 58502-5650  
Telephone: (701) 530-1016  
[dan.kuntz@mduresources.com](mailto:dan.kuntz@mduresources.com)

**For Mor-Gran-Sou Electric Cooperative:**

Don Franklund  
Co-General Manager/CEO  
Mor-Gran-Sou Electric Cooperative  
P.O. Box 297  
Flasher, ND 58535  
Telephone: (701) 597-3301

Dated this 27<sup>th</sup> day of June, 2012.

Respectfully submitted,

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



By: Tamie Aberle  
Regulatory Affairs Manager

Mor-Gran-Sou Electric Cooperative, Inc.



By: Don Franklund  
Co-General Manager/CEO

## **SERVICE AREA AGREEMENT**

This Service Area Agreement (Agreement) is between Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. \_\_\_\_\_ (Montana-Dakota), and Mor-Gran-Sou Electric Cooperative, Inc., P.O. Box 297, 202 6<sup>th</sup> Avenue West, Flasher, ND 58535 (Mor-Gran-Sou).

### **RECITALS**

Montana-Dakota and Mor-Gran-Sou have franchises to construct, maintain and operate electric distribution systems in the City of Mandan, North Dakota granted by the City of Mandan pursuant to §40-05-01 N. D. Cent. Code.

Section 49-03-06 N. D. Cent. Code authorizes agreements among electric providers to encourage harmony and operational efficiency in the provision of electric distribution service; to promote safety; to discourage unreasonable duplication of electric facilities; to assure adequate and reliable electric service; and to obtain anti-trust immunity for agreements such as this.

Montana-Dakota and Mor-Gran-Sou are "electric providers" as defined under §49-03-01.5 N. D. Cent. Code.

Montana-Dakota and Mor-Gran-Sou desire to avoid misunderstanding and disagreement over areas that each party is to serve and over Service Locations within these areas; provide both parties with equitable participation in the provision of electric distribution service in un-served areas governed by this Agreement; encourage operational efficiency and safety and discourage unreasonable duplication of electric facilities; and assure orderly growth of electric infrastructure for adequate and reliable service in the areas governed by this agreement.

### **ARTICLE I.** **SERVICE AREAS, LOCATIONS AND FACILITIES**

Montana-Dakota and Mor-Gran-Sou agree to the following:

1. **Areas Governed.** The areas governed by this Agreement are the City of Mandan and those areas within the two (2) mile extraterritorial jurisdictional boundary defined by the City of Mandan as of the date of this Agreement and such other areas outside of the green and yellow shaded areas on the attached map that are annexed to the City of Mandan during the term of this Agreement. The provision of electric distribution service to Service Locations outside the geographic scope of this Agreement shall be governed by applicable law, any future amendments extending the scope of this Agreement or new service area agreements that may be made between the parties.
2. **Definitions.** For purposes of this Agreement:

The term "Service Location" shall mean structures, facilities, or improvements located within the areas governed by this Agreement to which retail electric service is provided.

The term "existing Service Location" shall mean the Service Locations to which a party provides service as shown by its books and records as of the date of signing of this Agreement. The term includes all expansions, improvements, or additions to a Service Location made after the date of signing of this Agreement that do not amount to a new Service Location.

The term "new Service Location" shall mean a Service Location that is not an existing Service Location. An existing Service Location is converted to a new Service Location when: (1) retail electric service is provided to a Service Location after electric service has been disconnected and electric service use abandoned at the Service Location for a period of at least 90 days; or (2) a customer makes a material change of use of the Service Location or modifies the structures, facilities or improvements on the Service Location and such change or modification necessitates a replacement or substantial modification of the electric service facilities historically used to serve the Service Location, including but not limited to:

- o Replacement of single phase family/farm use to three phase commercial/industrial or three phase high density residential use (18 or more units);
  - o Replacement of single phase commercial/industrial use to three phase commercial/industrial use of 2MW or greater of connected load; and
3. Montana-Dakota Service Area. The service area of Montana-Dakota is that area governed by this Agreement illustrated in yellow on the attached map, incorporated by reference as integral to this Agreement. Montana-Dakota will provide retail electric service in this service area and Mor-Gran-Sou shall not provide retail electric service in this service area, except as otherwise provided in this Agreement or in any amendment to this Agreement. That is, unless changed by the written consent of both parties, Montana-Dakota will serve all of its existing Service Locations and all new Service Locations in its service area while Mor-Gran-Sou will continue to serve only its existing Service Locations in Montana-Dakota's service area. Mor-Gran-Sou may serve new Service Locations within Montana-Dakota's service area only as provided in this Agreement or in any amendment to this Agreement.
4. Mor-Gran-Sou Service Area. The service area of Mor-Gran-Sou is that area governed by this Agreement illustrated in green on the attached map, incorporated by reference as integral to this Agreement. Mor-Gran-Sou will provide retail electric service in this service area and Montana-Dakota shall not provide retail electric service in this service area, except as otherwise provided in this Agreement or in any amendment to this Agreement. That is, unless changed by the written consent of both parties, Mor-Gran-Sou will serve all of its existing Service Locations and all new Service Locations in its service area while Montana-Dakota will continue to serve only its existing Service Locations within Mor-Gran-Sou's service area. Montana-Dakota may serve new Service Locations

within Mor-Gran-Sou's service area only under conditions further stipulated in this Agreement.

5. Separate Agreements Pertaining to Service Locations. With the written consent of the parties:
  - o Electric service may be supplied by one party to a new Service Location in another party's service area on a temporary or permanent basis.
  - o New or existing Service Locations may be exchanged, even though the number or service characteristics of the Service Locations to be exchanged are not equal.

Agreements pertaining to Service Locations shall not alter or stand as precedent to alter the intent of this Agreement regarding the provision of retail electric service in defined service areas.

6. Service Location Disputes. This Agreement is subject to the continuing jurisdiction of the North Dakota Public Service Commission to settle Service Location disputes arising under the Agreement.
7. Duplication of Facilities. The parties will avoid unreasonable duplication of facilities in order to provide electric service for all consumers efficiently and economically. The duplication of some facilities, however, will not violate or serve as grounds to alter this Agreement.
8. Sale, Transfer, Exchange or Lease of Equipment or Facilities. A sale, transfer, exchange or lease of equipment or facilities owned by one party but located in the other party's service area may be made with the written consent of both parties. To the extent applicable, a sale, exchange, transfer or lease of equipment or facilities made under this section of this Agreement is subject to §49-04-05 and §10-13-08.1 5 N. D. Cent. Code.
9. Tapping Facilities. A temporary tap of one party's facilities may be made by the other with the written consent of both parties to an interconnection agreement and/or electric wheeling agreement governing the terms of the tap.
10. Adjustment of Service Areas. It is the intent of the parties that after the Effective Date of this Agreement, each party shall have a reasonable opportunity to serve approximately fifty percent (50%) of the undeveloped potential electric service growth annexed to the City of Mandan during the term of this Agreement. The parties shall meet as needed to determine and designate the service area or service areas within which each new area proposed for annexation outside the green and yellow shaded areas on the attached map should be included. This designation should be provided to the City of Mandan.  
After the tenth calendar year following the effective date of this Agreement, each party has one opportunity to request, in writing, a formal review and adjustment of the boundaries of the service areas described in paragraphs 3 and 4 and as illustrated in yellow and green shaded areas on the attached map if the number of new Service Locations within that party's service area, but excluding any Service Location served by the other party, since the effective date of this

Agreement was less than forty percent (40%) of the total number of new Service Locations within the areas governed by this Agreement, including areas added as a result of annexation to the City of Mandan.

If a party requests adjustment of the service area boundaries under this section 10, the parties shall meet to consider adjustments to the boundaries of the service areas, including, if necessary, the service areas described in paragraphs 3 and 4 and as illustrated in yellow and green shaded areas on the attached map, so as to provide both parties a reasonable opportunity to serve approximately fifty percent (50%) of the undeveloped potential load growth in the area governed by this Agreement. The party requesting adjustment has the burden of showing that it does not have a reasonable opportunity to serve approximately fifty (50%) percent of the undeveloped potential load growth.

If a party requests adjustment of the service area boundaries under this section 10 and the parties are unable to agree upon such adjustment, a party may request the dispute be submitted to mediation with a mediator mutually agreeable to the parties. If the parties are unable to select a mediator or are unable to resolve the dispute through mediation, the party requesting an adjustment may request the dispute be resolved by binding arbitration in accordance with the Rules of the American Arbitration Association by a panel of three arbitrators. Within fifteen days of a request for arbitration, each party shall select one person to act as an arbitrator and the two shall select a third neutral arbitrator within ten days of their appointment. If the arbitrators selected by the parties are unable to agree upon the third arbitrator, the third arbitrator shall be selected by the American Arbitration Association. The costs and expenses of any mediation or arbitration shall be borne equally by the parties.

11. Scope of the Agreement. This Agreement governs electric distribution service by the parties to Service Locations within the areas governed by this Agreement. This Agreement does not apply to nor does it affect the rights of either party:
- o To construct transmission or distribution line facilities in the other party's service area for the purpose of providing adequate electric power in any area it serves;
  - o To maintain existing transmission or distribution line facilities in the other party's service area for the purpose of providing adequate electric power in any area it serves;
  - o To the provision of electric transmission or distribution services outside of the areas governed by this Agreement; or
  - o Under applicable law, except only to the extent specifically enumerated herein.

ARTICLE II.  
RELATIONSHIPS WITH OTHER ENTITIES

12. Filing the Agreement for Approval. This Agreement shall be filed with the North Dakota Public Service Commission and the City of Mandan substantially

concurrent with its execution. Both parties will file written statements with and appear before the North Dakota Public Service Commission and the Mandan Board of City Commissioners supporting unconditional approval of this Agreement.

13. Filing Franchise Agreements for Approval. Substantially concurrent with the filing of this Agreement with the City of Mandan, the parties shall jointly request the Mandan Board of City Commissioners to issue new 20-year electric utility franchises to each party. The terms of each franchise is to be substantially in the form attached hereto, authorizing each party to provide electric distribution service to service locations within the areas governed by this Agreement and containing terms otherwise consistent with this Agreement. Both parties will file written statements with and appear before the Mandan Board of City Commissioners supporting unconditional approval of each franchise.
14. Conditions Precedent to Agreement. This Agreement is subject to approval of the North Dakota Public Service Commission and the Mandan Board of City Commissioners. If this Agreement is disapproved by either entity, or if the Mandan Board of City Commissioners does not grant franchises consistent with the terms of this Agreement before May 31, 2012, this Agreement shall be void *ab initio*.
15. Future Requests for Certificates of Public Convenience and Necessity. After the effective date of this Agreement, in all cases under the provisions of Chpt. 49-03 N. D. Cent. Code, when Montana-Dakota applies to the North Dakota Public Service Commission for a certificate of public convenience and necessity to extend its electric service to a new Service Location under the terms of this Agreement, Mor-Gran-Sou shall not object to Montana-Dakota's application.
16. Future Reports to City and Public Service Commission. After the effective date of this Agreement, the parties will report any transactions under paragraph 5 or any adjustment under paragraph 10 to the North Dakota Public Service Commission and the City of Mandan, to the extent required by law, regulation, franchise or ordinance.
17. Annual Review Requirement. It is realized that this Agreement will not cover all conditions that may arise but, if followed in good faith by both parties, will serve as a guide to future development and growth for both parties. The parties shall meet on an annual basis to review the operation of this Agreement and the parties' respective growth in electric service within the areas governed by this Agreement since the effective date of this Agreement.

### ARTICLE III. EFFECTIVE DATE AND TERM

18. Effective Date. This Agreement shall become effective on the first day of the month following the date of the last of these events:
  - o Approval of this Agreement by the North Dakota Public Service Commission;

- Approval of this Agreement by the Mandan Board of City Commissioners.
19. Term. Unless terminated sooner by the written consent of both parties, this agreement shall continue from its effective date through May, 2032.

Either party may give written notice to the other on or before May 31, 2031 of its intent to terminate the Agreement at the end of its term.

If neither of the foregoing two events occurs, this Agreement shall remain in force after May 31, 2032 until either party gives twelve months written notice to the other party of its intent to terminate this Agreement or negotiate a new agreement consistent with the intent and purpose of this Agreement. It is the intent of the parties that upon or prior to termination of this Agreement, they will enter into negotiations for a new service area agreement to provide both parties with a reasonable opportunity for equitable participation in the future provision of electric distribution service to new Service Locations within the unserved areas annexed to the City of Mandan.

The party giving notice to terminate under this paragraph must also give contemporaneous notice to the North Dakota Public Service Commission and the City of Mandan.

ARTICLE IV.  
MISCELLANEOUS PROVISIONS

20. Entire Agreement. This Agreement, including the attachments, constitutes the parties' entire agreement. It supersedes and terminates all previous agreements, written or oral, between the parties with respect to matters included within the scope of this Agreement.
21. Waiver of Certain Rules of Construction. This Agreement is the result of good faith negotiations between the parties, each having equal bargaining status and each having participated in the drafting of this Agreement to express the parties' intentions. Accordingly, each party waives the benefit of any rule of contract interpretation premised on the other party's responsibility for drafting the Agreement or the other party's bargaining status.
22. Independence of the Parties. The parties are entirely independent and neither have the right to act for or control the other. This Agreement does not create a joint venture, partnership or other agency relationship between the parties.
23. No Third-Party Rights. This agreement confers no rights or obligations upon anyone other than the parties. It may be enforced solely by the parties. This Agreement creates no third-party beneficiaries.
24. Assignment. Either Party may assign this Agreement in connection with a merger, sale of substantially all of its assets, consolidation or other reorganization resulting in another acquiring the right of a party to provide electric service in the service area of that party.

- 25. Waiver of Right of Enforcement. The failure of either party to require strict performance of any portion of this Agreement or the waiver of a breach of any condition in this Agreement shall not waive or affect that party's right to require full and conforming performance thereafter.
- 26. Partial Invalidity. Each provision of this Agreement is to be interpreted to make this Agreement effective and enforceable under applicable law. If any provision is held invalid or unenforceable, the remainder of this Agreement is not to be affected thereby but is to be reformed only to the extent necessary to make the Agreement effective and enforceable as if the invalid or unenforceable provision had never been included in the Agreement.
- 27. Notices. All notices from one party to the other shall be given in writing to the address for the party stated above, by any means of delivery that provides for confirmation of delivery to that address.


MONTANA-DAKOTA UTILITIES CO.  
a Division of MDU Resources Group, Inc.


  
\_\_\_\_\_  
Vice President + CEO

ATTEST:  
  
\_\_\_\_\_  
Assistant Secretary

Date: \_\_\_\_\_

MOR-GRAN-SOU  
ELECTRIC COOPERATIVE, INC.

  
\_\_\_\_\_  
Chairman

ATTEST:  
  
\_\_\_\_\_  
Secretary

Date: 3/28/12

**AMENDMENT NO. 1 TO  
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 **Mor-Gran-Sou Electric Cooperative** (Mor-Gran-Sou). Montana-Dakota and Mor-Gran-Sou 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 Mandan, 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. Section 14 of the **AGREEMENT** shall be amended to provide as follows:

Conditions Precedent to Agreement. This Agreement is subject to approval by the North Dakota Public Service Commission and the Mandan Board of City Commissioners. If this Agreement is disapproved by either entity, or if the Mandan Board of City Commissioners does not grant franchises consistent with the terms of this Agreement before June 30, 2012, this Agreement shall be void *ab initio*.

2. 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.
3. 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.

4. 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.**

By: *Del H. Fahn*

Title: *PRESIDENT + CEO*

Date: *5/8/2012*

**Mor-Gran-Sou Electric Cooperative**

By: *D. L. L.*

Title: *Board Chair*

Date: *5/4/12*

**Mor-Gran-Sou Electric Cooperative, Inc.  
 Montana-Dakota Utilities Co.  
 Service Area Agreement  
 Mandan, ND**

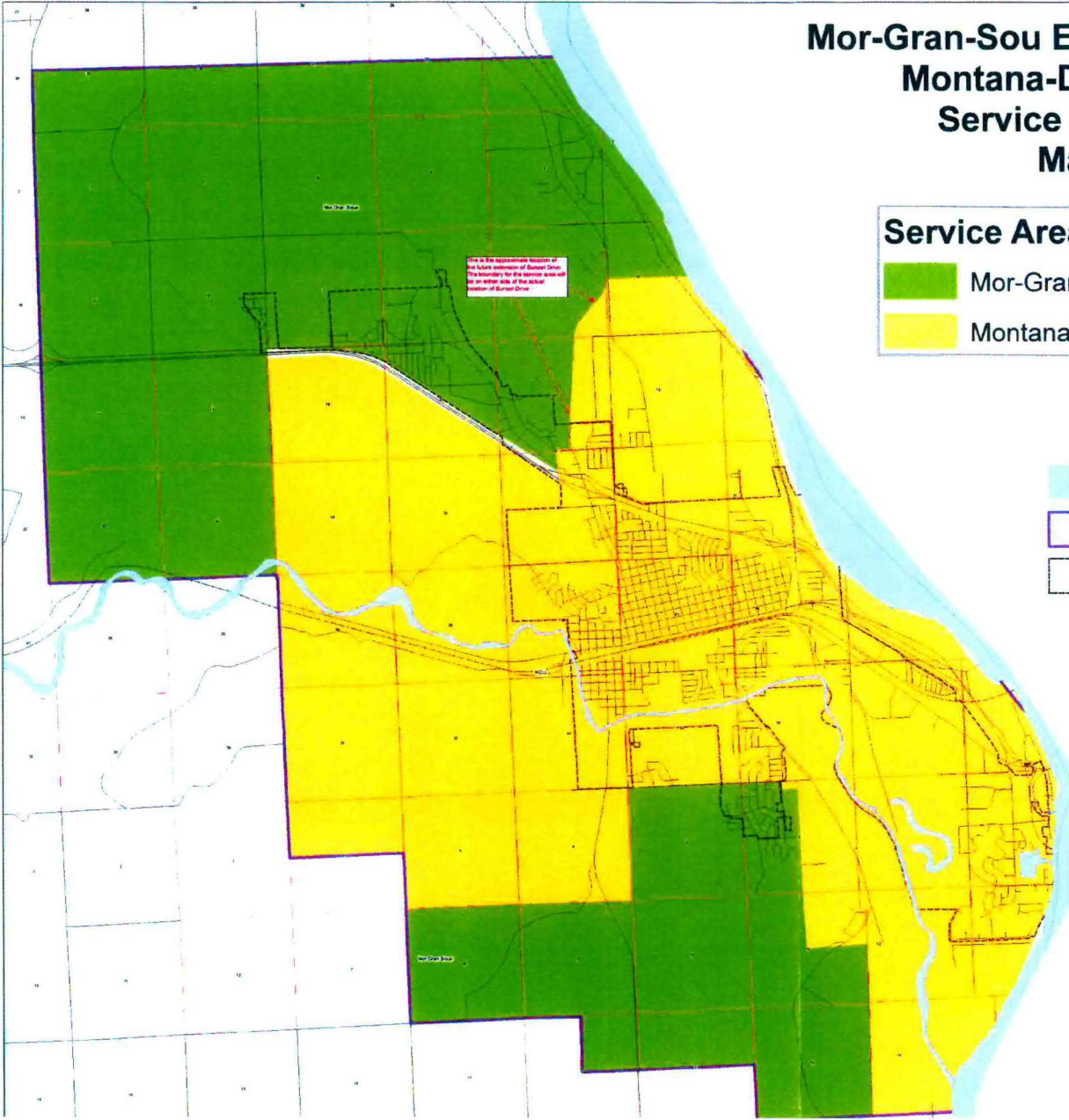
**Service Area Boundary**

- Mor-Gran-Sou Electric Cooperative, Inc
- Montana-Dakota Utilities Co.

**Map Features**

- Water Features
- Mandan 2 Mile
- Mandan City Limits

This is the approximate location of the future extension of Sunset Drive. The boundary for the service area will be on either side of the future location of Sunset Drive.



MOR-GRAN-SOU ELECTRIC COOPERATIVE, INC.

*[Signature]*  
 President

ATTEST: *[Signature]*

Secretary

Date: 4/5/12

MONTANA-DAKOTA UTILITIES CO.  
 Division of MDU Resources Group, Inc.

*[Signature]*  
 President

ATTEST:

Secretary

Date: \_\_\_\_\_

