

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

North Dakota Manufactured Housing  
Association

Case No. PU-12-807

v.  
Montana-Dakota Utilities Co.

AFFIDAVIT OF SERVICE BY REGULAR MAIL

STATE OF NORTH DAKOTA

COUNTY OF BURLEIGH

Dorothy Vedvick deposes and says that she is over the age of 18 years and not a party to this action and, on the 8<sup>th</sup> day of January, 2013, she deposited in the United States Mail, Bismarck, North Dakota, one envelope with return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

North Dakota Manufactured Housing Association v. Montana-Dakota Utilities Co.  
Motion to Dismiss

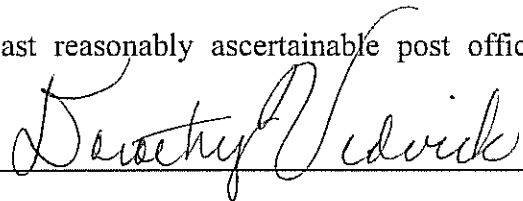
The envelope was addressed as follows:

Executive Secretary  
ND Public Service Commission  
600 East Boulevard, Dept. 408  
Bismarck, ND 58505-1480  
Email: [dnitschk@nd.gov](mailto:dnitschk@nd.gov).

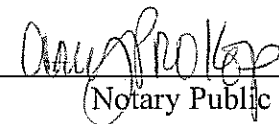
Todd Kranda  
Attorney at Law  
Kelsch Law  
103 Collins Avenue  
Mandan, ND 58554

Illona Jeffcoat-Sacco  
General Counsel  
600 East Boulevard, Dept 408  
Bismarck, ND 58505-1480

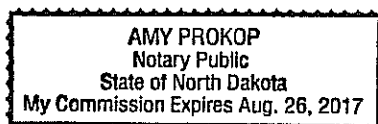
Each address shown is the respective addressee's last reasonably ascertainable post office address.

  
\_\_\_\_\_

Subscribed and sworn to before me this 8<sup>th</sup> day of January, 2013

  
\_\_\_\_\_  
Notary Public

SEAL



 **MDU RESOURCES**  
**GROUP, INC.**

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1200 West Century Avenue  
Bismarck, ND 58503

Mailing Address:  
P.O. Box 5650  
Bismarck, ND 58506-5650  
(701) 530-1000  
Direct Dial No.  
(701) 530-1016  
(701) 530-1731 (fax)

January 8, 2013

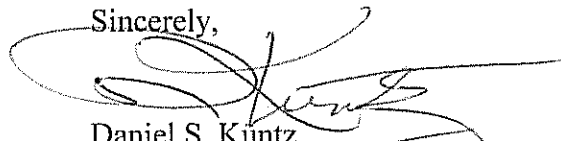
Executive Secretary  
North Dakota Public Service Commission  
600 East Boulevard, Dept. 408  
Bismarck, ND 58505-0480

RE: North Dakota Manufactured Housing Association v. Montana-Dakota Utilities Co.  
Case No. PU-12-807

Enclosed for filing on behalf of Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. ("Montana-Dakota") are the original and seven copies of a Motion to Dismiss the above-referenced proceeding. Montana-Dakota moves the Commission to dismiss the complaint in this proceeding on the grounds it does not conform to the requirements of N.D.C.C. § 28-32-21, N.D.C.C. § 49-05-01, and N.D. Admin. C. § 69-02-02-02, and fails to state a claim upon which relief can be granted. Upon expiration of an opportunity to amend the complaint, Montana-Dakota requests the complaint be dismissed.

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,



Daniel S. Kuntz  
Associate General Counsel

DSK/djv

Enclosures

cc: Tamie Aberle  
Todd Kranda  
Illona Jeffcoat Sacco

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**North Dakota Manufactured Housing  
Association,  
Complainant**

**Case No. PU-12-807**

**v.**

**Motion to Dismiss**

**Montana-Dakota Utilities Co.,  
Respondent**

**MOTION**

The Respondent, Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. (“Montana-Dakota”) moves the North Dakota Public Service Commission (the “Commission”) to dismiss the Complaint in this proceeding on the grounds it does not conform to the requirements of N.D.C.C. § 28-32-21, and N.D.C.C. § 49-05-01, and N.D. Admin. C. § 69-02-02-02 and fails to state a claim upon which relief can be granted. Upon expiration of an opportunity to amend the complaint, Montana-Dakota requests the complaint be dismissed.

**LEGAL STANDARD**

N.D.C.C. § 28-32-21(1) sets forth the requirements for a complaint before an administrative agency against a specific named respondent. The statute requires that the complaint “shall contain a concise statement of the claims or charges upon which the complainant relies, including reference to the statute or rule alleged to be violated, and the relief sought”. N.D.C.C. § 49-05-01 requires a complaint before the Commission shall set “forth any fact or thing done or omitted to be done by any public utility . . . in violation or claimed violation of any provision of law or any order or rule of the commission.” N.D. Admin. C § 69-02-02-02 (2) similarly provides that a formal complaint must “be drawn to fully advise the respondent and the commission of the factual and legal grounds of the complaint, the injury complained of, and the specific relief sought.”

## **FACTUAL BACKGROUND**

The North Dakota Manufactured Housing Association (“NDMHA”) complains that Montana-Dakota has discontinued a practice followed by certain of its local offices when those offices were charged with responsibility for customer bill collection within their service area. Personnel of these offices or the Company’s Credit Center provided a personal contact to some landlords or property managers prior to when utility service to a tenant of their property was discontinued. The notice was provided as a courtesy to prevent damage to the landlord’s property in the event the property was not winterized at the time utility service was discontinued. The notice allowed landlords the opportunity to direct that utility service be placed in the landlord’s account to prevent the discontinuance of service to the property.

To standardize collection practice and avoid customer privacy concerns, Montana-Dakota recently discontinued this informal practice. Montana-Dakota nonetheless makes available to landlords of rental properties the Continuous Service Agreement (“CSA”) attached hereto as a way to prevent the potential property damage the prior informal practice was intended to address. Under the CSA, the landlord (termed a “Financially Responsible Party”) agrees that in the event of a discontinuance of utility service to a tenant of the landlord’s property, and unless indicated otherwise by the landlord, utility service will be automatically transferred to the landlord’s account to prevent disconnection of service and potential damage to the landlord’s property. The CSA, like the prior practice, is offered as a courtesy to landlords without charge. Unlike the prior practice, the landlord does not receive advance notice of a discontinuance. The complaint seeks an order requiring Montana-Dakota to provide such advance notice of discontinuance.

## **ARGUMENT (1)**

Contrary to the requirements of N.D.C.C. § 28-32-21, the complaint does not include any reference to a statute or rule alleged to be violated. This is because there is no statute or rule that requires a utility to provide any notice to a landlord when utility service to a tenant is discontinued. When utility service is in the tenant's account, the tenant, and not the landlord, is the utility's customer. The utility has no legal or contractual relationship with, nor duties owed to, the landlord and vice versa. A utility's contractual relationship, and correspondingly its obligations under N.D.C.C. Chapter 49-04-17 regarding its services, are solely to the tenant as the utility's customer. Similarly, the landlord's legal and contractual relationship is solely with its tenant and any requirement for advance notice of the tenant's failure to maintain utility service to the property should be imposed by the landlord upon the tenant and not upon the utility. Unless the Landlord is willing to accept responsibility for payment of the account in the event of a delinquency, it does not have the right of a customer under the account. Alternatively, the landlord can place utility service in the landlord's account to assure continuous service and recover the cost of utility service directly from the tenant. NDMHA essentially wants the rights of a customer without any corresponding responsibility for payment.

The NDMHA complaint mischaracterizes the terms of the CSA stating that the Financially Responsible Party is responsible for all utility bills not paid by the tenant. The CSA simply allows transfer of utility service to the landlord's account at the election of the landlord; the landlord is only responsible for utility charges incurred after the date of transfer. The NDMHA also addresses potential customer privacy concerns associated with the requested advance notice by suggesting that tenants could waive their privacy rights and authorize notification to the landlord in the event of discontinuance of service. Montana-Dakota has serious concerns of whether such a waiver would indeed be a voluntary waiver of the customer's privacy rights or rather a forced waiver as a condition

to securing a rental property. In any regard, overcoming the privacy concern does not change the fact that there is not a legal basis for the complaint against Montana-Dakota. Indeed recognition of the privacy concern is an acknowledgement that Montana-Dakota's current practice is not only allowed but also proper under current law.

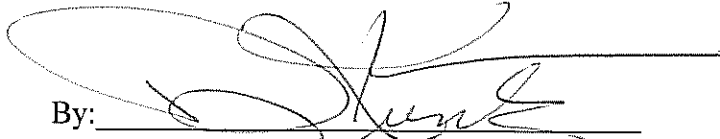
Montana-Dakota is not unsympathetic to the landlords' concerns of property damage in the event of a discontinuance of utility service to rental properties. The CSA is an arrangement to prevent damage to such properties. Montana-Dakota also agreed to develop a notification system to provide prompt notification to the landlord electronically when service is transferred to the landlord's account under the CSA. Although Montana-Dakota recognizes that NDMHA prefers the advance notice that was provided by certain of Montana-Dakota's offices previously, the discontinuance of that practice is not a violation of a statute, rule or order, and therefore, the complaint fails to state any type of valid claim against Montana-Dakota. To the extent NDMHA seeks a requirement that a utility offer advance notice to landlords of a discontinuance of service to their rental properties, the appropriate mechanism is to seek adoption of a rule in accordance with the rulemaking procedures of N.D.C.C. Chapter 28-32 applicable to all utilities.

### **CONCLUSION**

Because the Complaint fails to allege that Montana-Dakota has violated any statute, rule, or order, the Complaint fails to state a claim as a matter of law and should be dismissed. The appropriate procedure for the relief sought by the NDMHA is the initiation of a rulemaking.

Dated this 8<sup>th</sup> day of January, 2013

Respectfully submitted,

A handwritten signature in black ink, appearing to read "DKuntz", is written over a horizontal line. The signature is stylized and cursive.

By:

Daniel S. Kuntz (ID #03490)  
Associate General Counsel  
MDU Resources Group, Inc.  
1200 West Century Avenue  
P.O. Box 5650  
Bismarck, ND 58506-5650  
(701) 530-1016



# MONTANA-DAKOTA

UTILITIES CO.

A Division of MDU Resources Group, Inc.

**In the Community to Serve®**

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P.O. Box 7608, Boise, ID 83707-1608

Phone: (800)-638-3278 · Fax: (701) 323-3104

Customer Service Hours: 7 AM – 7 PM (M–F)

[www.montana-dakota.com](http://www.montana-dakota.com)

Thank you for your interest in Montana-Dakota Utilities Co. Continuous Service Program.

Enclosed you will find the following documents:

1. CONTINUOUS SERVICE AGREEMENT
2. SERVICE LOCATIONS – Exhibit A
3. CONTINUOUS SERVICE AGREEMENT AUTHORIZATION – Exhibit B

Please take the time to read the Agreement thoroughly. It is important that you understand and act in accordance with each section of the Agreement. After completing the required information on all of the applicable forms, sign each where indicated and mail all of the documents back to Montana-Dakota Utilities Co. in the envelope provided.

As soon as we receive the documents back from you, we will process your Agreement and return a copy to you for your records.

- Service must be activated prior to or on the date this Agreement becomes effective.
- The Agreement provides **12 month continuous service** to the Properties between tenants, regardless of the time of year. Seasonal Agreements will no longer be offered.
- Read Section 4 regarding disconnection carefully. You must select whether you **DO** or **DO NOT** request MDU to continue Energy Services if the tenant account at the property is discontinued for nonpayment.
- All additions or deletions to the Billing Information and Exhibit A must be in the form of a **written notice** signed by the Financially Responsible Party. If a manager or agent is authorized to act with respect to the Properties, please complete the Continuous Service Agreement Authorization (Exhibit B). All of the information can be scanned and sent by email to [customerservice@mdu.com](mailto:customerservice@mdu.com) or faxed to us at 701-323-3104.
- The Agreement must be signed by the Financially Responsible Party for real properties described in Exhibit A. If property management services are used and the Property Manager signs the Agreement, the Property Manager assumes financial responsibility for Energy Services pursuant to the Agreement.

If you require additional information or have questions, please call our Customer Service Center at the number listed above.

Sincerely,

**Customer Services**



## CONTINUOUS SERVICE AGREEMENT

**Scan and return via:**

- E-mail: customerservice@mdu.com
- Fax: 1-701-323-3104 or
- Mail: Montana-Dakota Utilities Co., Attn: Customer Support, PO Box 7608, Boise, ID 83707-1608

1. **RECITATION.** The Undersigned (hereinafter referred to as "Customer") is the Financially Responsible Party (i.e. owner, manager, or otherwise financially responsible for the maintenance of the real properties described on Exhibit A hereto (hereinafter referred to as "Properties") which may be occupied by others (hereinafter referred to as "Tenants") from time to time. **Montana-Dakota Utilities Co.** (hereinafter referred to as the "Utility") provides Natural Gas and/or Electric services (hereinafter referred to as "Energy Services") to the location of the Properties in accordance with the terms of tariffs filed with the state regulatory agency of the jurisdiction in which the Properties are located. The Agreement is intended to assure continuous Energy Services to the Properties during periods in which a Tenant has not arranged for or has failed to maintain energy services.
2. **TERM.** This Agreement between the Utility and the Customer is effective as of the date (hereinafter referred to as the "Effective Date") that it is processed by the Utility. For electronic communication purposes, the Customer must provide an active e-mail address prior to processing. Utility will provide e-mail notification that the Agreement has been processed. This Agreement will continue in effect until cancelled by either party upon five (5) days prior written notice sent in accordance with Paragraph 5 below. Properties subject to this Agreement must have energy services activated prior to or on the Effective Date. Termination of this Agreement does not relieve the Customer from its obligation to pay for any Energy Service charges incurred under this Agreement prior to the effective date of termination. In the event the Customer cancels this Agreement with respect to one or more Properties listed on Exhibit A, the Customer will not be eligible to enter another Continuous Service Agreement for a period of 12 months with respect to those Properties that were cancelled. Failure on the part of the Customer to pay their bills promptly when due shall constitute sufficient grounds for termination of this Agreement by the Utility.
3. **RESPONSIBILITY.** The Utility agrees to provide Energy Services at the Properties specified by the Customer between occupancy by tenants, regardless of the time of year, until this Agreement is terminated with respect to the properties. The Customer assumes liability for Energy Service charges incurred during periods in which a Tenant has not assumed responsibility for payment of Energy Services to the Properties.  
The Utility reserves the right to deny service or disconnect Energy Services pursuant to the rules and regulations of the applicable regulatory agency. If a Tenant is denied Energy Service, or Energy Services to the Tenant have been disconnected, the Customer may request that the Energy Services to the applicable Property be disconnected without affecting this Agreement. A disconnection of Energy Services to the Properties at the request of the Customer for any other reason will terminate the Agreement.  
In the event of a dispute regarding any sums due, the date of discontinuance, or the effective date of Energy Services, the Utility's records will be presumed correct unless the Customer presents information showing the Utility's records are incorrect in which event the presumption shall no longer apply.
4. **DISCONNECTION.** In addition to the above terms of service, if a Tenant account at such a Property is discontinued for **Nonpayment of Services**,  I DO  I DO NOT request the Utility to continue Energy Services at the Property and bill me for such Energy Services until a new Tenant account is opened or I request termination of the Agreement with respect to the Property. These instructions will apply even if the Tenant remains in the Property.
5. **CHANGES AND DELETIONS.** The Customer agrees to provide **PRIOR WRITTEN NOTICE** to the Utility of any changes in telephone number, mailing address, e-mail address or additions and deletions to Exhibit A, Service Property Locations. By signing this Agreement as the Customer, it is understood that the Customer is authorized to start or stop Energy Services, make additions or deletions of Properties to this Agreement and to enter into this Agreement. Other persons authorized to act on behalf of the Customer under this Agreement are shown on Exhibit B which may be amended by Customer upon receipt of written notice by the Utility.
6. **MISCELLANEOUS.** This Agreement constitutes the entire Agreement between the parties and supersedes all prior Agreements and understandings relating to continuation of Energy Services to any of Customer's properties prior to the effective date of this Agreement. The Utility has no further responsibility or liability to the Customer, expressed or implied, for continuation of Energy Services to Customer's properties except as set forth herein.
7. **LIABILITY LIMITATION.** THE LIABILITY OF THE UTILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES OF CUSTOMER NOT TO EXCEED \$500 AND NEITHER PARTY SHALL BE RESPONSIBLE FOR SPECIAL, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OR ANY COMMERCIAL LOSS OF ANY KIND (INCLUDING LOSS OF BUSINESS OR PROFIT). THIS LIMITATION APPLIES TO ALL CLAIMS WHETHER BASED ON BREACH OF EXPRESS OR IMPLIED WARRANTY, INDEMNITY, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT, OR OTHER LEGAL THEORY.
8. **SIGNATURE.** This Agreement must be signed by the Customer. If property management services are used and a Property Manager signs this Agreement, the Property Manager assumes financial responsibility for Energy Services pursuant to this Agreement.

### BILLING INFORMATION

(\* An asterisk indicates that the information is required for processing.)

**Please Print**

E-mail Address: \_\_\_\_\_ \*Social Security Number: \_\_\_\_\_  
 (Enter an active e-mail address for electronic communication purposes) \*Business Tax ID Number: \_\_\_\_\_

Spouse/Partner Name: \_\_\_\_\_ \*Emergency Contact Name: \_\_\_\_\_

\*Billing Address: \_\_\_\_\_ \*Address: \_\_\_\_\_

\*City: \_\_\_\_\_ \*State: \_\_\_\_\_ \*Zip: \_\_\_\_\_ \*City: \_\_\_\_\_ \*State: \_\_\_\_\_ \*Zip: \_\_\_\_\_

\*Primary Contact Phone: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_ \*Emergency Phone Number: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Cell Phone: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_ Employer Name: \_\_\_\_\_

Fax Number: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_ Work Phone: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Customer Printed Name: \_\_\_\_\_

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

### FOR OFFICE USE ONLY

CSA ID #: \_\_\_\_\_ Processed By: \_\_\_\_\_ Date: \_\_\_\_\_



**MONTANA-DAKOTA**  
**UTILITIES CO.**

A Division of MDU Resources Group, Inc.

*In the Community to Serve®*

**EXHIBIT A**  
**SERVICE LOCATIONS**

Scan and return via:

- E-mail: customerservice@mdu.com

- Fax: 1-701-323-3104 or

- Mail: Montana-Dakota Utilities Co., Attn: Customer Support, PO Box 7608, Boise, ID 83707-1608

IDENTIFICATION NUMBER (OFFICE USE ONLY)	COMPLETE STREET ADDRESS	APT. NO.	CITY, STATE
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			
16.			
17.			
18.			
19.			
20.			

Customer Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_

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

**FOR OFFICE USE ONLY**

CSA ID #: \_\_\_\_\_ Processed By: \_\_\_\_\_ Date: \_\_\_\_\_



## EXHIBIT B

# CONTINUOUS SERVICE AGREEMENT AUTHORIZATION

**Scan and return via:**  
 - **E-mail:** customerservice@mdu.com  
 - **Fax:** 1-701-323-3104 or  
 - **Mail:** Montana-Dakota Utilities Co., Attn: Customer Support, PO Box 7608, Boise, ID 83707-1608

The Undersigned authorizes the agent designated below to act as personal representative, on their behalf, with regard to a Continuous Service Agreement entered into between the Customer and the Utility.

The Undersigned authorizes the persons or entities identified below: (1) To be party to information regarding the Agreement and account information pertaining to real properties described on Exhibit A, Properties. (2) To provide PRIOR WRITTEN NOTICE to the Utility of any changes to telephone number, mailing address, e-mail address or additions and deletions to Exhibit A. (3) To start and stop Energy Services for real properties described on Exhibit A.

(\* An asterisk indicates that the information is required for processing.)

*Name of Authorized Property Management Company <i>(Complete if applicable)</i> :			
*Name of Authorized Person(s):			
*Social Security Number:		*Business Tax ID Number:	
*Address:			
*City:	*State:	*Zip:	
*Primary Contact Phone:	Cell Phone:	Fax Number:	E-mail Address:

I hereby affirm that I am the Financially Responsible Party (i.e. owner, manager, or otherwise financially responsible) for the real properties described on Exhibit A and authorize the aforementioned person or entities to act on my behalf regarding all aspects of the Continuous Service Agreement.

Customer Printed Name: \_\_\_\_\_

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

**FOR OFFICE USE ONLY**

CSA ID #: \_\_\_\_\_ Processed By: \_\_\_\_\_ Date: \_\_\_\_\_