

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  
STEVEN A. LAUTT  
ASHLEIGH B. ENSRUD

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

GRAND FORKS OFFICE  
202 NORTH 3RD STREET, SUITE 200  
GRAND FORKS, NORTH DAKOTA 58203  
(701) 775-9000

OF COUNSEL  
HERBERT L. MESCHKE  
DONALD A. NEGAARD  
RETIRED  
THOMAS A. WENTZ  
JAN M. SEBBY

KENNETH G. PRINGLE  
(1914-1983)  
MITCHELL H. MAHONEY  
(1929-1996)  
ROGER O. HERIGSTAD  
(1919-2003)  
MARK F. PURDY  
(1927-2011)

May 27, 2014

DARRELL NITSCHKE,  
EXECUTIVE SECRETARY  
ND PUBLIC SERVICE COMMISSION  
STATE CAPITAL – DEPT 408  
600 EAST BOULEVARD AVENUE  
BISMARCK, ND 58505-0480



**APPLICATION MONTANA-DAKOTA UTILITIES CO. FOR A CERTIFICATE OF  
PUBLIC CONVENIENCE AND NECESSITY FOR MENARD, INC.  
CASE NO. PU-13-871**

Enclosed for filing on behalf of Capital Electric Cooperative are the original and seven copies of its proposed Findings of Fact, Conclusions of Law and Order in the above referenced proceeding. An electronic copy of the document is also being sent. Please acknowledge receipt by date stamping or initialing the duplicate copy of this letter.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Matthew H. Olson  
Pringle & Herigstad P.C.  
lat

Enclosures

cc: Daniel S. Kuntz  
Wade C. Mann

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

**Montana-Dakota Utilities Co.  
Menard, Inc. – Burleigh County  
Public Convenience and Necessity**

**Case No. PU-13-5871**

**Capital Electric Cooperative, Inc.'s  
PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

**APPEARANCES**

Commissioners Brian P. Kalk, Randy Christmann, and Julie Fedorchak.

Matthew H. Olson, Pringle & Herigstad, P.C., 2525 Elk Dr., P.O. Box 1000, Minot, N.D. 58702, appearing on behalf of Capital Electric Cooperative, Inc.

Daniel S. Kuntz, Associate General Counsel, MDU Resources Group, Inc., P.O. Box 5650, Bismarck, N.D. 58506, appearing on behalf of Montana-Dakota Utilities Co.

Ryan Norrel, Legal Counsel, North Dakota Public Service Commission, State Capital, Bismarck, N.D. 58505, appearing on behalf of the Public Service Commission.

Wade C. Mann, Office of Administrative Hearings, 2911 North 14<sup>th</sup> Street, Suite 303, Bismarck, N.D. 58503, appearing as Administrative Law Judge.

**PRELIMINARY STATEMENT**

This matter came before the North Dakota Public Service Commission (the Commission) on application of Montana-Dakota Utilities Co. (MDU) to serve a commercial electric load located in the NE Section 33, Township 139 North, Range 77 West, Burleigh County, North Dakota (Menard site). This electric load would be provided to Menard, Inc. The application for service was dated November 25, 2013.

On December 18, 2013, the Commission issued a Notice of Opportunity for Hearing. A protest was filed by Capital Electric Cooperative, Inc. (CEC), of Bismarck, North Dakota.

The Commission issued a Notice of Hearing dated February 26, 2014; said notice set forth the ten (10) factors that the Commission would consider. The hearing was held on May 2, 2014 (the hearing). The Commission makes the following findings of fact, reaches the following conclusions of law, and issues its Order:

### **FINDINGS OF FACT**

#### I.

The primary purpose of the Territorial Integrity Act is “to keep to a minimum wasteful duplication of capital-intensive utility services and conflicts between suppliers of electricity.” Cass Co. Elec. Co-op., Inc. v. N. States Power Co., 419 N.W.2d 181, 185 (N.D. 1988).

#### II.

The Menard site is located immediately north of the railroad in a rural area southeast of the unincorporated village of McKenzie (McKenzie). No Area Service Agreement is relevant to this proceeding.

#### III.

McKenzie has seen no growth nor was any evidence presented that future growth is expected.

#### IV.

In October 2013, Menard, Inc. requested electric service from CEC. Menard, Inc. also requested service from MDU. At the hearing, Menard, Inc. expressed its preference that MDU serve the Menard site, primarily because of the savings it would receive because of MDU’s current rate schedule. “[C]ustomer preference, while a factor to be considered, is not controlling.” Cass County Elec. Coop. v. Wold Properties, Inc., 249 N.W.2d 514, 521

(N.D. 1976). “The reason, of course, is that unregulated customer preference would result in a wasteful duplication of facilities which the Territorial Integrity Act was intended to minimize.” Id. “It is the Public convenience and necessity, after all, with which the Commission is concerned, not private preference.” Tri-County Elec. Coop. v. Elkin, 224 N.W.2d 785, 792 (N.D. 1974).

V.

Currently, MDU’s rates are lower than CEC’s rates. Both MDU and CEC’s rates are subject to change. There is no guarantee that MDU’s rates will be lower than CEC in the future and vice versa.

VI.

Both MDU and CEC provide electric service within a two mile radius of the Menard site. MDU has twenty-nine (29) customers within a two mile radius of the Menard site, twenty-seven (27) of which are located in the village of McKenzie. CEC has eleven (11) customers within a two mile radius of the Menard site; three (3) of CEC’s customers are directly adjacent to the Menard site.

VII.

MDU’s electric facilities are approximately 1,800 feet from the Menard site.

VIII.

CEC has electric facilities (single phase) that surround and are directly adjacent to the Menard site on three sides – the electric services are immediately adjacent to the north, the west, and the south. CEC serves a customer just northeast of the Menard site, serves

a customer directly west of the Menard site, and serves a railroad signal on the south side of the Menard site.

IX.

Both CEC and MDU require upgrades to their respective electric facilities to serve the Menard site.

X.

To serve the Menard site, CEC would have to add two additional phases for one mile (5,280 feet) in order to provide three phase service to the Menard site; the cost for this extension would cost \$44,527.31. Within the Menard site, CEC's estimated cost for its electrical services is \$65,696.30. The total for CEC to serve the Menard site would be \$110,223.61. CEC has sufficient capacity at its Menoken substation. Even with the new electrical load attributable to the Menard site, CEC, without any upgrades, would continue to have sufficient capacity at the Menoken substation for additional growth.

XI.

To serve the Menard site, MDU would cross CEC electric facilities.

XII.

To serve the Menard site, MDU would need to take multiple steps to serve the Menard site, which includes upgrading and extending MDU's electric system for approximately 8,700 feet. MDU's McKenzie substation is unable to serve the proposed load at the Menard site. Therefore, the first upgrade MDU would make would be to its McKenzie substation, which would cost \$61,451; this cost does not include a new transformer because MDU would utilize a decades-old transformer that has been totally depreciated. Second, MDU would need to convert its delta three-phase system to a wye

three-phase system for approximately 5,700 feet and convert an additional 1,200 feet of single-phase to three-phase system for a cost of \$32,562; again, MDU's cost for this upgrade does not include the cost of the transformer to convert McKenzie to 7,200 volts. Third, MDU would need to extend 1,800 feet of three-phase service to the Menard site for a cost of \$32,619. MDU must make all three upgrades and/or extensions to provide electrical service to the Menard site. Lastly, within the Menard site, MDU's estimated cost of new electrical would be \$66,039. The total cost for MDU to serve the Menard site would be \$192,671, which is \$82,447.39 more than CEC's costs.

### XIII.

MDU does not have an alternate substation to serve the Menard site, so if MDU's McKenzie substation fails, the Menard site will have no power.

### XIV.

CEC has an additional substation - the Sterling substation - that would give redundancy to the Menard site; currently, the Sterling substation does not have sufficient capacity to provide electricity to the entire Menard site, but the Sterling substation could provide electricity to part of the Menard site if the Menoken substation fails. To provide total redundancy to the Menard sites, an upgrade for the sum of \$40,000 to the Sterling substation would be required. This upgrade would be done by Central Power Electric Cooperative.

### XV.

Menard, Inc. expressed that three phase interruption is important for its operation at the Menard site because of the motors that Menard, Inc. will run. Both MDU and CEC are able to provide this three phase interruption mechanism.

XVI.

Both MDU and CEC had voltage drop calculation studies performed using the projected load from the Menard site, both MDU and CEC's results from the studies were within the accepted limits in the industry.

XVII.

Service from either supplier is expected to be sufficiently reliable, for CEC has reported 4 outages in a 6 year timeframe and MDU has reported 5 outages in a 15 year timeframe. That fact that CEC has partial redundancy in its electric facilities because of the two substations makes CEC's service more reliable.

XVIII.

Currently, MDU's rates are lower than CEC's rates. Under the rates currently in placed, based on the estimated annual electrical consumption, MDU's total annual cost to Menard, Inc. would be \$513,669.84 and CEC's total annual cost would be \$575,883.84 (see Exhibit MDU-10, page 1); the annual difference at the current rates are \$62,214.

XIX.

Both MDU and CEC are able to earn an adequate return on its investment if able to serve the Menard site. CEC's costs to serve the Menard site are \$82,447.39 less than MDU's costs and CEC's current rates are slightly higher than MDU's rates which results in a higher rate of return for CEC.

XX.

CEC has facilities that are directly adjacent to and surround the Menard site on three sides – the north, west, and south side – and MDU would have to cross these facilities in order to serve the Menard site. Therefore, development of electric services in

this area will be more orderly if this load is served by CEC. Granting the request of MDU to serve this load would result in and promote a bad “checkerboarding” effect.

XXI.

In the short term and long term, it is more economical and will avoid wasteful duplication of investment or service if CEC serves this load. Allowing MDU to serve the Menard site would result in wasteful duplication because MDU would need to upgrade its McKenzie substation when CEC currently can serve Menard site without having to upgrade its Menoken substation. No evidence was presented that MDU foresees additional growth in the area which further establishes that its proposed upgrade to its substation results in duplication of CEC’s electric facilities that are already in place since MDU is upgrading its system solely because of the Menard site. Also, the fact that MDU’s costs to serve the Menard site are \$82,447.39 more than the costs of CEC indicates that wasteful duplication of investment and service will result if MDU serves the Menard site.

XXII.

There was no evidence of record showing that the Menard site will be included within the corporate limits of a municipality within the foreseeable future.

XXIII.

Allowing MDU to serve the site will interfere with CEC’s facilities because MDU would cross CEC’s facilities that already surround the Menard site. Additionally, economic interference would result if MDU were allowed to serve the Menard site because CEC would be denied the benefits derived from Menard, Inc. revenues, which would accrue to the benefit of CEC’s member-owners. This would be one of CEC’s largest loads which would allow CEC to recoup much of the investment that CEC has incurred in this rural area

where it has spent money on building infrastructure to serve rural homes, farmsteads, and railroad signals that are already adjacent to Menard site. Allowing MDU to serve the Menard site would deny CEC this economic benefit. Service by MDU of the Menard site will unreasonably interfere with CEC's investment in the area.

XXIV.

The service of the Menard site by CEC will not interfere with the facilities of MDU.

**CONCLUSIONS OF LAW**

I.

The Commission has jurisdiction over this matter.

II.

It is not in the public interest for the Commission to grant the application of MDU for a Certificate of Public Convenience and Necessity.

**ORDER**

IT IS HEREBY ORDERED that MDU shall not serve the Menard site located, NE Section 33, Township 139 North, Range 77 West, Burleigh County, North Dakota. The application of MDU is denied. The service to this location shall be provided by CEC.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**PUBLIC SERVICE COMMISSION**

\_\_\_\_\_  
Randy Christmann  
Commissioner

\_\_\_\_\_  
Brian P. Kalk  
Chairman

\_\_\_\_\_  
Julie Fedorchak  
Commissioner