

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Montana-Dakota Utilities Co. a Division of
MDU Resources Group, Inc.
Menard, Inc. – Burleigh County
Public Convenience & Necessity**

Case No. PU-13-871

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

September 17, 2014

Appearances

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

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

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

Ryan Norrell, Special Assistant Attorney General appearing on behalf of the Public Service Commission.

Wade C. Mann, Office of Administrative Hearings, 2911 North 14th Street, Suite 303, Bismarck, ND 58503, as Procedural Hearing Officer.

Preliminary Statement

On November 25, 2013, Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. (Montana-Dakota) submitted an application to extend electric service to Menard, Inc. at a location adjacent to the unincorporated community of McKenzie in the NE ¼ of Section 33, Township 139N, Range 77W, Burleigh County, North Dakota (Menard Site).

On January 16, 2014, Capital Electric Cooperative, Inc. (Capital Electric), Bismarck, North Dakota filed a protest and request for hearing on the application.

On February 26, 2014, the Commission issued a Notice of Hearing scheduling a public hearing to be held on Friday, May 2, 2014. The notice identified the following issues to be considered:

1. From whom do the customers prefer electric service?
2. What electric suppliers are operating in the general area?

3. What electric supply lines exist within at least a two-mile radius of the location to be served, and when were they constructed?
4. What customers are served by electric suppliers within at least a two-mile radius of the location to be served?
5. What are the differences, if any, between the electric suppliers available to serve the area with respect to reliability of service?
6. Which of the available electric suppliers will be able to serve the location in question more economically and still earn an adequate return on its investment?
7. Which supplier's extended electric service would best serve orderly and economic development of electric service in the general area?
8. Would approval of the applications result in wasteful duplication of investment or service?
9. Is it probable that the location in question will be included within the corporate limits of a municipality within the foreseeable future?
10. Will service by either of the electric supplier in the area unreasonably interfere with the service or system of the other?

On May 2, 2014, a public hearing on the application was held as scheduled. Following the hearing, Capital Electric submitted late filed exhibits G and I, as directed by the Administrative Law Judge.

On June 13, 2014, Montana-Dakota filed a request for oral argument before the Commission.

On June 19, 2014, Capital Electric filed an objection to Montana Dakota's request.

On June 25, 2014, the Commission granted Montana-Dakota's request for oral argument.

On July 14, 2014, the Office of Administrative Hearings issued a Notice of Oral Argument and Pre-Argument Order scheduling the argument to be held on July 28, 2014 and setting parameters for briefing and argument.

On July 22, 2014, Montana-Dakota and Capital Electric filed briefs.

On July 28, 2014, oral argument was held as scheduled.

Having heard and considered these matters, the Commission makes its:

Findings of Fact

1. Montana-Dakota is an investor owned electric utility providing electric service to customers in North Dakota under the regulatory jurisdiction of this Commission.
2. Capital Electric is a rural electric cooperative providing electric service to its members in North Dakota.

From whom does the customer prefer electric service?

3. Montana-Dakota's application included an appearance form signed by Menard, Inc. indicating it desires electric service at the Menard Site from Montana-Dakota.
4. Steve Manor, General Manager of Distribution Center Maintenance for Menard, Inc., testified that Menard, Inc. is developing a manufacturing and distribution center at the Menard Site. The center requires three-phase electric service at each of several locations on the site and the anticipated total electric load at the site will be approximately 1.2 MW with estimated annual consumption of approximately 7 million kWh
5. Mr. Manor testified that Menard, Inc. desires to receive electric service at the proposed facility from Montana-Dakota for four reasons: 1) Menard, Inc. expects to realize an annual savings of approximately \$62,000 by receiving electric service from Montana-Dakota. 2) Montana-Dakota offers rate schedules for interruptible service and demand response programs that provide further opportunities for cost savings to Menard, Inc. as it plans to install customer-owned generation at the site. Capital Electric does not currently offer demand control programs. The cost savings from lower electric rates and opportunities to participate in demand control programs are important to Menard, Inc. 3) Quality and reliability of service are important considerations to Menard, Inc. and Montana-Dakota's ability to provide service with less voltage drop is important to the operation of equipment at the Menard Site. 4) Menard, Inc. prefers to receive its electric service from a provider whose rates and services are subject to regulatory oversight and approval by an independent agency with an opportunity for customer input.
6. The Commission finds that the customer prefers electric service from Montana-Dakota.

What electric suppliers are operating in the general area?

7. Montana-Dakota and Capital Electric are the only electric suppliers operating in the general area of the Menard Site. Montana-Dakota has held a franchise since 1928 to serve the community of McKenzie, which is immediately northeast and adjacent to

the site. Capital Electric provides single-phase service to rural customers adjacent to the site.

What electric supply lines exist in at least a two-mile radius of the location to be served and when were they constructed?

8. Montana-Dakota owns and operates a 46 kV transmission line that originates at Bismarck and extends in an easterly direction along the north side of I-94 providing transmission service for a number of communities served by Montana-Dakota, including the community of McKenzie. The transmission line is a two-way or looped supply source for Montana-Dakota's substation located north of McKenzie, which in turn supplies Montana-Dakota's distribution system serving its customers in McKenzie and the surrounding area. The transmission line west of the McKenzie substation was rebuilt in 1972, and the transmission line east of the McKenzie substation was rebuilt in 1975. The prior transmission line serving the community of McKenzie and the surrounding area was constructed in 1945. Montana-Dakota's distribution line for the community of McKenzie is a Delta three-phase primary overhead line extending south from the McKenzie substation. The current distribution lines used to serve the community of McKenzie were primarily constructed in 1960, 1965, 1969, 1971 and 1979. The distribution system continues outside of McKenzie as a single-phase line to serve customers south and west of McKenzie

9. Central Power Cooperative operates a transmission line located on the south side of I-94 that connects substations at Menoken and Sterling. Capital Electric proposes to serve the Menard Site from the Menoken Substation which is located approximately 8 miles west of McKenzie. Capital Electric has an underground three-phase distribution line which runs from the Menoken Substation along the south side of Interstate 94, and an underground single-phase distribution line which runs south from Interstate 94 for approximately one mile to the area of the Menard Site at which point it goes above ground to serve customers in the area. The underground three-phase line along Interstate 94 was built in 1976. The underground single-phase line extending south from Interstate 94 was rebuilt in 2010. The previous distribution line was an above-ground distribution line built in 1948.

10. Both electric suppliers will need to construct extensions to existing three-phase electric supply lines to serve the Menard Site. Montana-Dakota would serve the Menard Site by adding a neutral wire to convert approximately 5,700 feet of existing three-phase overhead line currently providing electric service to McKenzie from a Delta to Wye configuration, converting approximately 1,200 feet of single-phase line to three-phase Wye and then extending that converted line underground for a distance of approximately 1,800 feet to the Menard Site. Capital Electric would serve the Menard Site by converting about a mile of single-phase line to three-phase line between its existing three-phase line and the Menard Site.

What customers are served by electric suppliers within at least a two-mile radius of the location to be served?

11. Montana-Dakota serves 29 customers within a two-mile radius of the Menard Site and 28 of those customers are located within a one-mile radius of the Menard Site.

12. Capital Electric serves 11 customers within a two-mile radius of the Menard Site and 4 of those customers are located within a one-mile radius of the Menard Site.

What are the differences, if any, between the electric suppliers available to serve the area with respect to reliability of service?

13. Montana-Dakota would serve the Menard Site over approximately 8,700 feet of radial distribution line from the McKenzie Substation including an upgrade to three-phase Wye configuration for approximately 6,900 feet and an underground extension of approximately 1,800 feet from its current three-phase system to the Menard Site. Montana-Dakota has experienced five outages on this circuit since January 1, 2000.

14. Capital Electric would serve the Menard Site over approximately nine miles of distribution line from its Menoken Substation including an upgrade of approximately one mile of single-phase radial line to three-phase radial line. Capital Electric has experienced four outages since 2009 on its existing three-phase line that would be used to serve the Menard Site.

15. Capital Electric states it could improve the reliability of its three-phase line between the Menoken and Sterling substations to serve the Menard Site if Central Power Cooperative upgrades its Sterling Substation, which does not currently have capacity to serve the entire load planned at the Menard Site. The costs of such an upgrade were not included in Capital Electric's proposed costs to serve the Menard Site.

16. Montana-Dakota provided the results of a study showing that the voltage drop between the McKenzie substation and the primary side of the fifth building of the Menard Site with a total 1.1 MW Menard Site load would be less than 2.0 percent. Capital Electric provided the results of a study showing a voltage drop between the Menoken substation and the service entry point to the Menard Site of approximately 2.5 percent with a total 1.0 MW load.

17. The Commission finds that either supplier would be able to serve the Menard Site with sufficient reliability. However, Montana-Dakota's substation is located closer to the Menard Site, which could provide increased reliability because there would be less voltage drop and less line length upon which a fault could occur.

Which of the available electric suppliers will be able to serve the location in question more economically and still earn an adequate return on its investment?

18. Montana-Dakota would serve the Menard Site by extending its existing three-phase system at McKenzie and by converting that system and the McKenzie Substation from a Delta three-phase to a Wye three-phase system. The conversion of the McKenzie Substation would require replacement of existing transformers with a larger three-phase Wye transformer, voltage regulators, reclosure, and associated wiring. The transformer would be a used transformer from existing inventory. Conversion of the electric system within the community of McKenzie from Delta three-phase service to Wye three-phase service requires addition of a neutral wire to the existing three-phase distribution line. This conversion will upgrade and increase the capacity of Montana-Dakota's existing three-phase system sufficiently to serve the Menard Site and any additional load requests likely to result in the community of McKenzie. Montana-Dakota's estimated total cost to extend secondary service to the Menard Site is \$192,671, which includes the extension from the existing system to the Menard Site (\$32,619), upgrades to the McKenzie substation (\$61,451), the conversion of the McKenzie distribution line to a Wye three-phase system (\$32,562), and the installation of conductors and equipment within the Menard Site (\$66,039). Montana-Dakota's annual revenue requirement associated with the total incremental investment associated with the proposed extension is \$27,872.

19. Capital Electric would extend service to the Menard Site by installing one mile of two new phases to its current single-phase service between its existing three-phase system and the Menard Site. Capital Electric's estimated cost to extend secondary service to the Menard Site is approximately \$110,223, which includes the conversion of its single-phase line to a three-phase line (\$44,527) and the installation of conductors and equipment within the Menard Site (\$65,696). Capital Electric did not provide annual revenue requirements for recovering the cost of its proposed extension.

20. The estimated electric consumption for the Menard Site is approximately 7 million kWh per year. Consideration of the cost to serve the location includes consideration of not only the revenue requirement associated with the incremental investment to extend service, but also the other costs of electric distribution, transmission and generation as reflected in the service providers rates for service. The annual cost to the customer to provide secondary electric service to the Menard Site by Montana-Dakota for the estimated consumption under its current rates is \$513,669.84. The annual cost to the customer to provide secondary electric service to the Menard Site by Capital Electric for the estimated consumption under its current rates is \$575,883.84.

21. The annual cost to the customer for Capital Electric to provide firm secondary electric service to the Menard Site is approximately \$62,214, or 11 percent, more than the annual cost to the customer under Montana-Dakota's rate schedule for firm secondary electric service to the Menard Site. After adjusting Montana-Dakota's estimated annual revenue from providing service to the Menard Site by: (1) \$27,872 for the annual return requirement on its incremental investment to serve the location; and

(2) \$189,140 for the annual cost of fuel and purchased power to serve the location, there will be net contribution to common system costs of \$296,658, which will provide a benefit to other customers. Capital Electric did not provide information or an analysis of the amount of revenue Capital Electric would require to derive an adequate return on its incremental investment to serve the Menard Site.

22. The Commission finds that Montana-Dakota will be able to serve the Menard Site location more economically and still earn an adequate return on its investment.

Which supplier's extended electric service would best serve orderly and economic development of electric service in the general area?

23. Montana-Dakota is the electric provider within the community of McKenzie. Montana-Dakota and its predecessors have held a franchise from the McKenzie Township Board and a certificate of public convenience and necessity from the Board of Railroad Commissioners to provide electric service to McKenzie since 1928. The northwest corner of the Menard Site is immediately adjacent to the southeast corner of McKenzie. Montana-Dakota serves more customers within both a two mile and a one mile radius of the Menard Site than does Capital Electric.

24. Service by Montana-Dakota to the Menard Site is an extension and continuation of the existing electric service it has provided the community of McKenzie for 86 years. Montana-Dakota's substation and distribution facility upgrades to serve the Menard Site will also result in an upgrade of the three-phase system serving the community of McKenzie and provide additional capacity on that system for new load that can be anticipated as a result of employment created at the Menard Site. Service by Montana-Dakota would benefit not only development of the Menard Site but also the orderly and economic development of the community of McKenzie.

25. A primary consideration of which supplier would best serve orderly and economic development in these cases is whether a supplier's cost to provide service to a customer exceeds the cost to provide service to that same customer from a second supplier.¹ Montana-Dakota's costs of providing electric service to the Menard Site are \$62,214 less than Capital Electric's, which assists in the financial viability and success of the manufacturing and distribution center and the associated employment and economic development for the general area.

26. The Commission finds that service by Montana-Dakota to the Menard Site best serves the community of McKenzie and realizes a significant cost savings to Menard, Inc.; therefore, extension of service by Montana Dakota best serves orderly and economic development of electric service in the general area.

¹ See the Public Service Commission's December 17, 2008 Findings of Fact, Conclusions of Law and Order in four related Montana-Dakota Utility Co. public convenience and necessity applications in Kidder County, ND, Case No. PU-08-345, Case No. PU-08-346, Case No. PU-08-347 and Case No. PU-08-693.

Would approval of the application result in wasteful duplication of investment or service?

27. Both electric suppliers will need to construct extensions or upgrades to existing facilities to serve the Menard Site.

28. One factor to be considered in determining wasteful duplication of investment is whether, in order to serve the customer in question, one supplier's extension of facilities must cross the facilities of another supplier. In this case, both suppliers currently cross or would cross each other's lines in this area. Montana-Dakota's proposed line extension would cross Capital Electric's single-phase line located west of the Menard Site, which is not capable of serving and is not proposed by Capital Electric for use to serve the Menard Site. Capital Electric's three-phase line that feeds this single-phase line already crosses Montana-Dakota's three-phase line serving McKenzie.

29. Montana-Dakota's proposed addition of a larger transformer and conversion to a Wye system will improve Montana-Dakota's electric service within the community of McKenzie and help meet potential growth resulting from approximately 240 new jobs.

30. The Commission finds that approval of the application would not result in wasteful duplication of investment or service.

Is it probable that the location in question will be included within the corporate limits of a municipality within the foreseeable future?

31. The community of McKenzie is unincorporated. There is no evidence of any plans to incorporate the community of McKenzie.

Will service by either of the electric suppliers in the area unreasonably interfere with the service or system of the other?

32. The Commission finds that extension of service by either supplier would not interfere physically or operationally with the service or system of the other supplier.

33. Montana-Dakota and its predecessors have been serving the community of McKenzie, directly adjacent to the Menard Site, since 1928 in close proximity to Capital Electric's system, which was built to serve rural areas for which central station power was not otherwise available (see N.D. Century Code. section 10-13-01). The Territorial Integrity Act does not provide that rural electric cooperatives are the preferred supplier of electric service in all rural areas of the state but rather requires a public utility to obtain a certificate of public convenience and necessity before it extends facilities in a rural area. The public utility must show that public convenience and necessity reasonably requires such extension.²

² *Application of Otter Tail Power Co.*, 169 N.W.2d 415, 418 (N.D. 1969); *Cass County Elec. Co-op v. Wold Properties, Inc.*, 249 N.W.2d 514, 520 (N.D. 1976); *Capital Electric v. Public Service Commission*, 534 N.W.2d 587,590 (N.D. 1995).

34. The Commission finds that public convenience and necessity reasonably requires approval of Montana-Dakota's application because:

- The customer prefers electric service from Montana-Dakota as it results in more than \$60,000 in annual cost savings and better meets the customer's needs;
- Montana-Dakota has served customers in the area since 1928 and has more customers within a one-mile and two-mile radius of the location;
- Montana-Dakota's substation is located closer to the Menard Site providing less voltage drop and less line length on which a fault could occur;
- The proposed extension of Montana-Dakota's three-phase system to serve the site is shorter than the proposed extension of Capital Electric's three-phase system.
- Montana-Dakota will serve the Menard Site more economically when considering both the cost to extend service and the annual costs to the customer as reflected in rates for service;
- Montana-Dakota's extension of service would best serve the community of McKenzie and realize significant cost savings to Menard, Inc., therefore best serving orderly and economic development of the area; and

From the foregoing Findings of Fact, the Commission makes its:

Conclusions of Law

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding.
2. Public convenience and necessity require the granting of a Certificate of Public Convenience and Necessity to the applicant in this proceeding.

From the foregoing Findings of Fact and Conclusions of Law, the Commission issues its:

Order

The Commission Orders:

1. Montana-Dakota's application for a certificate of public convenience and necessity to extend electric service to the Menard Site is granted.
2. Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., is issued Certificate of Public Convenience and Necessity No. 5845, authorizing the provision of electric distribution service to the Menard Site at a location in the NE 1/4 of Section 33, Township 139N, Range 77W, Burleigh County, North Dakota.

PUBLIC SERVICE COMMISSION



Randy Christmann
Commissioner



Brian P. Kalk
Chairman



Julie Fedorchak
Commissioner

PUBLIC SERVICE COMMISSION
STATE OF NORTH DAKOTA

Certificate of Public Convenience and Necessity

Certificate Number 5845

This is to certify that public convenience and necessity require, and permission is granted for Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., to serve Menard, Inc. at a location in the NE 1/4 of Section 33, Township 139N, Range 77W, Burleigh County, North Dakota.

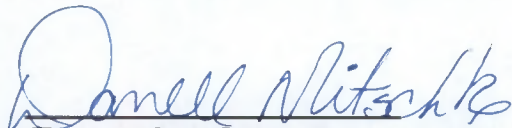
This certificate is issued in accordance with the Order of this Commission dated September 17, 2014 in Case No. PU-13-871, and is subject to the conditions and limitations noted in the Order.


This certificate is conditioned upon Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. securing the franchise or other authority of the proper municipal or other public authority for the exercise of these rights and privileges.

Bismarck, North Dakota, September 17, 2014.

ATTEST:

PUBLIC SERVICE COMMISSION


Executive Secretary


Commissioner

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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

Case No. PU-13-871

DISSENTING OPINION

Throughout this entire case it has been clear that the customer, Menard, Inc., desired electric service from Montana-Dakota. However, Menard Inc.'s witness clearly stated that when Menard, Inc. initially sought electrical service they had no idea that there were two electric providers in the area. Customer preference is not a controlling factor in whether public convenience and necessity reasonably requires a public utility to extend service to a customer in a rural area.

The Territorial Integrity Act (the Act) is designed "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). A factor to be considered in determining wasteful duplication of investment is whether, in order to serve the customer in question, one supplier's extension of facilities must cross the facilities of another supplier. In the case at hand, Capital Electric's facilities and lines are immediately adjacent to the Menard Site, while three of Capital Electric's eleven customers within two-miles are located immediately contiguous to the Menard Site. Permitting Montana-Dakota to serve the Menard Site would require Montana-Dakota to cross an existing Capital Electric line located immediately adjacent to the west side of the proposed Site. Crossing this line by Montana-Dakota would be wasteful duplication.


Another factor to be considered in determining whether wasteful duplication of investment or service occurs is whether construction of facilities to extend service to a customer by one supplier exceeds the cost to extend service to that same customer by a second supplier. Capital Electric can extend service to the Menard Site for \$82,447.39 which is less than Montana-Dakota. Most of the difference in cost is because Montana-Dakota needs to upgrade its McKenzie substation and transformers in order to serve the Menard Site, whereas Capital Electric's Menoken substation already has sufficient existing capacity for the proposed load at the Menard Site and no further upgrade to the substation is needed. Granting Montana-Dakota's application to upgrade its McKenzie Substation and spend \$82,447.39 which would be passed on to public utility ratepayers would be wasteful duplication while Capital Electric has more than enough existing capacity at its Menoken Substation.

Another factor to consider is reliability. While both Montana-Dakota and Capital Electric would require line extension or system upgrades, it is worth noting that Montana-Dakota's reliability reports and voltage studies reflect the McKenzie Substation as-is, without any respect to its proposed upgrades, whereas Capital Electric's reports and studies regarding its Menoken substation reflect the present status, which would require no additional upgrades.

Finally, granting the application of Montana-Dakota to extend service would result in a "checkerboarding" effect of the rural area surrounding McKenzie. Capital Electric already serves three customers immediately adjacent to the Menard Site and to allow an "island" of Montana-Dakota electric service in between those three Capital customers will only serve to create future conflict between the electric suppliers and further interference with Capital Electric's system.

This is not the proper way to determine a territorial dispute, as both Montana-Dakota and Capital Electric are parties to numerous service area agreements throughout the State. No doubt, ancillary growth will occur as a result of the proposed manufacturing and distribution center, with plenty of opportunities for both parties to extend service to new customers. The best way to determine which supplier provides service to future customers is by entering into a service area agreement. Granting Montana-Dakota's application will embolden Montana-Dakota to attempt to extend service to every new customer in the rural area around the unincorporated community of McKenzie.

Even though the *customer preference* is for Montana-Dakota, the evidence shows that *public convenience* and necessity do not require granting the application of Montana-Dakota and therefore, I respectfully dissent.



Brian P. Kalk
Chairman