

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

---

Capital Electric Cooperative, Inc.,  
  
Appellant,

Supreme Court No. 20150227  
Burleigh County  
Civ. No. 08-2014-CV-02349

---

v.

North Dakota Public Service  
Commission and Montana-Dakota  
Utilities Co., a Division of MDU  
Resources Group, Inc.,

Appellees.

---

APPEAL FROM THE MEMORANDUM AND ORDER AFFIRMING THE PUBLIC  
SERVICE COMMISSION'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
ORDER DATED JUNE 3, 2015 AND JUDGMENT DATED AUGUST 19, 2015.  
HONORABLE JAMES S. HILL PRESIDING

---

APPENDIX OF APPELLANT CAPITAL ELECTRIC COOPERATIVE, INC.

---

Matthew H. Olson (#06182)  
PO Box 1000, 2525 Elk Drive  
Minot, ND 58702-1000  
(701) 852-0381  
molson@pringlend.com  
**Attorney for Capital Electric Cooperative, Inc.**

## TABLE OF CONTENTS

	<u>Page No.</u>
District Court Docket.....	1
Public Service Commission Docket.....	5
MDU’s Application for Permanent Authority .....	9
Capital’s Protest.....	16
Notice of Hearing.....	17
MDU Hearing Exhibit 1 (Map).....	18
MDU Hearing Exhibit 2 (Map).....	19
MDU Hearing Exhibit 3 (Map).....	20
MDU Hearing Exhibit 4 (Map).....	21
MDU’s Cost Estimates .....	22
MDU’s Hearing Exhibit 11 (McKenzie Franchise).....	26
Menard Inc.’s Application to Capital for Electric Service .....	38
Capital’s Hearing Exhibit B (Map).....	39
Capital’s Cost Estimates .....	40
PSC’s Findings of Fact, Conclusions of Law, and Order dated September 17, 2014 .....	42
Chairman Kalk’s Dissenting Opinion.....	52
District Court’s Memorandum and Order Affirming the Public Service Commission’s Finding of Fact, Conclusions of Law and Order dated June 3, 2015 .....	54
Judgment dated August 19, 2015.....	73a
Notice of Appeal .....	74
Order dated June 22, 2006, <u>Capital Elec. Coop. v. Montana-Dakota Utilities</u> , Case No. PU-05-551 .....	76
Order dated June 8, 2005, <u>In re Montana-Dakota Utilities</u> , Case No. PU-04-056 .....	90

**REGISTER OF ACTIONS**

CASE NO. 08-2014-CV-02349

Capital Electric Cooperative, Inc. vs. North Dakota Public Service Commission, et al.

§  
§  
§  
§  
§  
§

Case Type: **Administrative Appeal**  
Date Filed: **10/15/2014**  
Location: **-- Burleigh County**  
Judicial Officer: **Hill, James S**  
Supreme Court Docket Number: **20150227**

**PARTY INFORMATION**

<p><b>Appellant</b></p> <p>Capital Electric Cooperative, Inc. PO Box 730 Bismarck, ND 58502</p>	<p><b>Attorneys</b> Matthew Howard Olson <i>Retained</i> 701-852-0381 x0000(W)</p>
<p><b>Appellee</b></p> <p>Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.</p>	<p><b>Paul Reginald Sanderson</b> <i>Retained</i> 701-751-1243 x0000(W)</p> <p><b>Daniel S Kuntz</b> <i>Retained</i> 701-530-1016 x0000(W)</p> <p><b>Kelsey A. Krapp</b> <i>Retained</i> 701-751-1243 x0000(W)</p>
<p><b>Appellee</b></p> <p>North Dakota Public Service Commission</p>	<p><b>Ilona A Jeffcoat-Sacco</b> <i>Retained</i> 701-328-2400 x0000(W)</p>

**EVENTS & ORDERS OF THE COURT**

<b>OTHER EVENTS AND HEARINGS</b>	
10/15/2014	<u>Notice</u> Doc ID# 1 <i>Notice of Appeal and Specifications of Error</i>
10/15/2014	<u>Service Document</u> Doc ID# 2 <i>Affidavit of Mailing</i>
10/15/2014	<u>Notice of Assignment and Case Number</u> Doc ID# 3
10/15/2014	<u>Service Document</u> Doc ID# 4 <i>Undertaking on Appeal to District Court</i>
10/15/2014	<u>Service Document</u> Doc ID# 5 <i>Affidavit of Mailing</i>
10/31/2014	<u>Notice</u> Doc ID# 6 <i>Notice to Appellant of Estimated Costs</i>
10/31/2014	<u>Service Document</u> Doc ID# 7 <i>Affidavit of Service by Regular Mail</i>
11/03/2014	<u>Notice of Assignment and Case Number</u> Doc ID# 8
11/14/2014	<u>Notice</u> Doc ID# 9 <i>Notice of Appearance</i>
11/14/2014	<u>Service Document</u> Doc ID# 10 <i>Certificate of Service filing Notice of Appearance</i>
11/14/2014	<u>Notice of Assignment and Case Number</u> Doc ID# 11 <i>Paul Sanderson</i>
12/17/2014	<u>Exhibit</u> Doc ID# 12 <i>CR Exhibit 39 Service Document for Order</i>
12/17/2014	<u>Exhibit</u> Doc ID# 13 <i>CR Exhibit 40 Return Receipt</i>
12/17/2014	<u>Exhibit</u> Doc ID# 14 <i>CR Exhibit 41 Return Receipt</i>
12/17/2014	<u>Exhibit</u> Doc ID# 15 <i>CR Exhibit 42 Notice of Appeal</i>
12/17/2014	<u>Exhibit</u> Doc ID# 16 <i>CR Exhibit 43 Undertaking on Appeal</i>
12/17/2014	<u>Exhibit</u> Doc ID# 17 <i>CR Exhibit 44 PSC Docket Card</i>
12/17/2014	<u>Certificate of Record</u> Doc ID# 18
12/17/2014	<u>Exhibit</u> Doc ID# 19 <i>CR Exhibit 1 Application for CPCN</i>
12/17/2014	<u>Exhibit</u> Doc ID# 20 <i>CR Exhibit 2 Notice of Opportunity for Hearing</i>

12/17/2014	<u>Exhibit</u>	<b>Doc ID# 21</b> <i>CR Exhibit 3 Service Document for Notice</i>
12/17/2014	<u>Exhibit</u>	<b>Doc ID# 22</b> <i>CR Exhibit 4 Protest and Request for Hearing</i>
12/17/2014	<u>Exhibit</u>	<b>Doc ID# 23</b> <i>CR Exhibit 5 Notice of Hearing</i>
12/17/2014	<u>Exhibit</u>	<b>Doc ID# 24</b> <i>CR Exhibit 6 Service Documents Notice</i>
12/17/2014	<u>Exhibit</u>	<b>Doc ID# 25</b> <i>CR Exhibit 7 Return Receipt Notice</i>
12/17/2014	<u>Exhibit</u>	<b>Doc ID# 26</b> <i>CR Exhibit 8 Affidavit of Publication</i>
12/17/2014	<u>Exhibit</u>	<b>Doc ID# 27</b> <i>CR Exhibit 9 Hrg Exhibit MDU 1</i>
12/17/2014	<u>Exhibit</u>	<b>Doc ID# 28</b> <i>CR Exhibit 10 Hrg Exhibit MDU 2</i>
12/17/2014	<u>Exhibit</u>	<b>Doc ID# 29</b> <i>CR Exhibit 11 Hrg Exhibit MDU 3</i>
12/17/2014	<u>Exhibit</u>	<b>Doc ID# 30</b> <i>CR Exhibit 12 Hrg Exhibit MDU 4</i>
12/17/2014	<u>Exhibit</u>	<b>Doc ID# 31</b> <i>CR Exhibit 13 Hrg Exhibit MDU 5</i>
12/17/2014	<u>Exhibit</u>	<b>Doc ID# 32</b> <i>CR Exhibit 14 Hrg Exhibit MDU 6</i>
12/17/2014	<u>Exhibit</u>	<b>Doc ID# 33</b> <i>CR Exhibit 15 Hrg Exhibit MDU 7</i>
12/17/2014	<u>Exhibit</u>	<b>Doc ID# 34</b> <i>CR Exhibit 16 Hrg Exhibit MDU 8</i>
12/17/2014	<u>Exhibit</u>	<b>Doc ID# 35</b> <i>CR Exhibit 17 Hrg Exhibit MDU 9</i>
12/17/2014	<u>Exhibit</u>	<b>Doc ID# 36</b> <i>CR Exhibit 18 Hrg Exhibit MDU 10</i>
12/17/2014	<u>Exhibit</u>	<b>Doc ID# 37</b> <i>CR Exhibit 19 Hrg Exhibit MDU 11</i>
12/17/2014	<u>Exhibit</u>	<b>Doc ID# 38</b> <i>CR Exhibit 20 Hrg Exhibit A</i>
12/17/2014	<u>Exhibit</u>	<b>Doc ID# 39</b> <i>CR Exhibit 21 Hrg Exhibit B</i>
12/17/2014	<u>Exhibit</u>	<b>Doc ID# 40</b> <i>CR Exhibit 22 Hrg Exhibit C</i>
12/17/2014	<u>Exhibit</u>	<b>Doc ID# 41</b> <i>CR Exhibit 23 Hrg Exhibit D</i>
12/17/2014	<u>Exhibit</u>	<b>Doc ID# 42</b> <i>CR Exhibit 24 Hrg Exhibit H</i>
12/17/2014	<u>Exhibit</u>	<b>Doc ID# 43</b> <i>CR Exhibit 25 Hrg Exhibit List</i>
12/17/2014	<u>Exhibit</u>	<b>Doc ID# 44</b> <i>CR Exhibit 26 Proposed Fdgs, Concls and Order</i>
12/17/2014	<u>Exhibit</u>	<b>Doc ID# 45</b> <i>CR Exhibit 27 Proposed Fdgs, Concls and Order</i>
12/17/2014	<u>Exhibit</u>	<b>Doc ID# 46</b> <i>CR Exhibit 28 Request for Oral Argument</i>
12/17/2014	<u>Exhibit</u>	<b>Doc ID# 47</b> <i>CR Exhibit 29 Objection to Request</i>
12/17/2014	<u>Exhibit</u>	<b>Doc ID# 48</b> <i>CR Exhibit 30 Comm Motion Granting Request</i>
12/17/2014	<u>Exhibit</u>	<b>Doc ID# 49</b> <i>CR Exhibit 31 Letter Enclosing Motion</i>
12/17/2014	<u>Exhibit</u>	<b>Doc ID# 50</b> <i>CR Exhibit 32 Notice of Prehearing Conf</i>
12/17/2014	<u>Exhibit</u>	<b>Doc ID# 51</b> <i>CR Exhibit 33 Notice of Oral Arg and Pre-Arg Order</i>
12/17/2014	<u>Exhibit</u>	<b>Doc ID# 52</b> <i>CR Exhibit 34 Brief in Opposition to Applic</i>
12/17/2014	<u>Exhibit</u>	<b>Doc ID# 53</b> <i>CR Exhibit 35 Brief in Support of Applic</i>
12/17/2014	<u>Exhibit</u>	<b>Doc ID# 54</b> <i>CR Exhibit 36 Late-filed Hrg Exhibit G</i>
12/17/2014	<u>Exhibit</u>	<b>Doc ID# 55</b> <i>CR Exhibit 37 Late-filed Hrg Exhibit I</i>
12/17/2014	<u>Exhibit</u>	<b>Doc ID# 56</b> <i>CR Exhibit 38 Findings, Conclusions and Order</i>
12/19/2014	<u>Certificate</u>	<b>Doc ID# 57</b> <i>Certificate of Service</i>
12/19/2014	<u>Affidavit</u>	<b>Doc ID# 58</b> <i>Affidavit of Service by Regular Mail</i>
12/19/2014	<u>Certificate of Record</u>	<b>Doc ID# 59</b> <i>Compact disc containing electronic copy of transcript of administrative hearing (filed in CD box in storage cabinet in Clerk of Court office)</i>
12/22/2014	<u>Letter</u>	<b>Doc ID# 60</b> <i>Briefing Letter</i>
12/29/2014	<u>Stipulation / Agreement</u>	<b>Doc ID# 61</b> <i>Stipulation for Extension of Time</i>
12/29/2014	<u>Proposed Order</u>	<b>Doc ID# 62</b> <i>Order Re: Stipulation for Extension fo Time</i>

12/29/2014	<u>Order</u> Doc ID# 63 <i>Order-Stipulation for extension of time</i>
12/30/2014	<u>Exhibit</u> Doc ID# 64 <i>CR Exhibit 15 Hrg Exhibit MDU 7</i>
12/30/2014	<u>Service Document</u> Doc ID# 65 <i>Affidavit of Electronic Service</i>
01/08/2015	<u>Service Document</u> Doc ID# 66 <i>Affidavit of Service by Regular Mail</i>
01/09/2015	<u>Civil Filing</u> Doc ID# 67 <i>Compact disc containing the electronic record of the transcribed record of the administrative hearing before the PSC and electronic copy of transcribed record of the oral arguments before the PSC (filed in CD storage/cabinet)</i>
01/23/2015	<u>Brief</u> Doc ID# 68 <i>Appellant Capital Electric Cooperative, Inc.'s Brief</i>
01/23/2015	<u>Exhibit</u> Doc ID# 69 <i>Exhibit 5</i>
01/23/2015	<u>Service Document</u> Doc ID# 70 <i>Certificate of Service</i>
01/23/2015	<u>Service Document</u> Doc ID# 71 <i>Affidavit of Mailing</i>
01/23/2015	<u>Letter</u> Doc ID# 72 <i>Letter to Clerk of Court</i>
01/23/2015	<u>Exhibit</u> Doc ID# 73 <i>Exhibit 1</i>
01/23/2015	<u>Exhibit</u> Doc ID# 74 <i>Exhibit 2</i>
01/23/2015	<u>Exhibit</u> Doc ID# 75 <i>Exhibit 3</i>
01/23/2015	<u>Exhibit</u> Doc ID# 76 <i>Exhibit 4</i>
02/06/2015	<u>Brief</u> Doc ID# 77 <i>Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.'s Appellee Brief</i>
02/06/2015	<u>Service Document</u> Doc ID# 78 <i>Certificate of Service serving MDU's Appellee Brief on Olson and Jeffcoat-Sacco</i>
02/06/2015	<u>Brief</u> Doc ID# 79 <i>Appellee North Dakota Public Service Commission's Brief</i>
02/06/2015	<u>Service Document</u> Doc ID# 80 <i>Certificate of Service for Matthew Olson, Daniel Kuntz, Kelsey Krapp, Paul Sanderson, and Illona Jeffcoat-Sacco</i>
02/13/2015	<u>Brief</u> Doc ID# 81 <i>Appellant Capital Electric Cooperative Inc.'s Reply Brief</i>
02/13/2015	<u>Service Document</u> Doc ID# 82 <i>Certificate of Service</i>
02/18/2015	<u>Request for Hearing</u> Doc ID# 83 <i>Request for Oral Argument on Appeal</i>
02/18/2015	<u>Service Document</u> Doc ID# 84 <i>Certificate of Service serving Request for Oral Argument on Appeal on Olson and Jeffcoat-Sacco</i>
04/09/2015	<u>Notice of Hearing</u> Doc ID# 85 <i>Notice to Appear-Oral Arguments</i>
05/11/2015	<u>Civil Hearing</u> (9:00 AM) (Judicial Officer Hill, James S) <i>(in Mandan) Oral Arguments Keegan Steno 30kmk305150511</i> Result: Hearing Ended
06/05/2015	<u>Order</u> Doc ID# 86 <i>Memorandum and Order Affirming the Public Service Commission's Findings of Fact, Conclusions of Law and Order</i>
08/06/2015	<u>Notice</u> Doc ID# 87 <i>Notice of Appeal by Capital Electric Cooperative, Inc.</i>
08/06/2015	<u>Notice of Filing the Notice of Appeal</u> Doc ID# 88 <i>Notice of Filing Notice of Appeal</i>
08/06/2015	<u>Service Document</u> Doc ID# 89 <i>Affidavit of Service for Notice of Filing Notice of Appeal</i>
08/18/2015	<u>Proposed Judgment</u> Doc ID# 90 <i>Judgment</i>
08/18/2015	<u>Service Document</u> Doc ID# 91 <i>Certificate of Service</i>
08/19/2015	<u>Judgment</u> Doc ID# 92
08/26/2015	<u>Notice of Entry of Judgment</u> Doc ID# 93 <i>Notice of Entry of Judgment</i>
08/26/2015	<u>Judgment</u> Doc ID# 94 <i>Judgment</i>
08/26/2015	<u>Service Document</u> Doc ID# 95 <i>Certificate of Service</i>
09/01/2015	<u>Clerk's Certificate on Appeal</u> Doc ID# 96
09/02/2015	<u>Letter</u> Doc ID# 97 <i>From North Dakota Supreme Court Dated September 2, 2015</i>

FINANCIAL INFORMATION

Appellant Capital Electric Cooperative, Inc.	
Total Financial Assessment	80.00
Total Payments and Credits	80.00
Balance Due as of 10/07/2015	0.00
10/15/2014 Transaction Assessment	80.00

10/15/2014 | E-File Payment

Receipt # 08-2014-19061

Capital Electric Cooperative, Inc.

(80.00)

PU-13-871

Montana-Dakota Utilities Co., a Division of MDU R Status:M

CR Exhibit 44 PSC Docket  
Card

Description: Menard Inc. - Burleigh County, ND

Case Type: Public Convenience &amp; Necessity Portfolio: Julie L. Fedorchak

Date Filed: 11/25/2013 Advisory Staff: Jerry R. Lein

Category: Electric Docket Count: 17

Doc	Filed	Description	Pages:	Exhibit:	Certified to Court
1	11/25/2013	<b>Application for Permanent Authority</b> By: Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.	8		<input checked="" type="radio"/> Yes <input type="radio"/> No
2	12/18/2013	<b>Commission Motion issuing Notice of Opportunity for Hearing</b> By: Public Service Commission	1		<input type="radio"/> Yes <input checked="" type="radio"/> No
3	12/18/2013	<b>Notice of Opportunity for Hearing</b> By: Public Service Commission	1		<input type="radio"/> Yes <input checked="" type="radio"/> No
4	12/20/2013	<b>Affidavit of Service, Certified &amp; Regular Mail - docket No. 3</b> By: Public Service Commission	3		<input checked="" type="radio"/> Yes <input type="radio"/> No
5	1/16/2014	<b>Protest and request for hearing</b> By: Capital Electric Cooperative Inc. by Carol Larson, Pringle&Herigstad, P.C.	4		<input type="radio"/> Yes <input checked="" type="radio"/> No
6	2/20/2014	<b>Request for Administrative Law Judge</b> By: Public Service Commission	3		<input type="radio"/> Yes <input checked="" type="radio"/> No
7	2/24/2014	<b>Letter designating Administrative Law Judge</b> By: Office of Administrative Hearings by Wade C. Mann, Director	1		<input type="radio"/> Yes <input checked="" type="radio"/> No
8	2/26/2014	<b>Commission Motion issuing Notice of Hearing</b> By: Public Service Commission	1		<input type="radio"/> Yes <input checked="" type="radio"/> No
9	2/26/2014	<b>Notice of Hearing</b> By: Public Service Commission	1		<input type="radio"/> Yes <input checked="" type="radio"/> No
10	3/4/2014	<b>Affidavit of service cert. &amp; reg. mail- Notice of Hearing</b> By: Public Service Commission	3		<input checked="" type="radio"/> Yes <input type="radio"/> No
11	3/5/2014	<b>Email to and from NDNA request to publish Notice of Hearing</b> By: Public Service Commission	2		<input type="radio"/> Yes <input checked="" type="radio"/> No
12	3/7/2014	<b>Return receipt - Notice of Hearing</b> By: USPS	2		<input checked="" type="radio"/> Yes <input type="radio"/> No
13	3/25/2014	<b>Invoice #2858 \$362.97</b> By: North Dakota Newspaper Association	2		<input type="radio"/> Yes <input checked="" type="radio"/> No
14	3/25/2014	<b>Affidavit of Publication - verified</b> By: North Dakota Newspaper Association	1		<input checked="" type="radio"/> Yes <input type="radio"/> No
15	3/28/2014	<b>Letter enclosing filing fee</b> By: Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. by Caitlin Straabe, Reg. Compliance Spec.	1		<input type="radio"/> Yes <input checked="" type="radio"/> No
16	4/2/2014	<b>Receipt# 8,749 \$20,000.00 P C &amp; N filing fee</b> By: Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.	1		<input type="radio"/> Yes <input checked="" type="radio"/> No
17	4/9/2014	<b>Docketed in error</b> By: Public Service Commission	1		<input type="radio"/> Yes <input checked="" type="radio"/> No
18	4/23/2014	<b>Commission Motion retaining Ryan Norrell to provide legal services</b> By: Public Service Commission	1		<input type="radio"/> Yes <input checked="" type="radio"/> No

12/9/2014

Doc	Filed	Description	Pages:	Exhibit:	Certified to Court
19	5/6/2014	<b>Electronic record of May 2, 2014 formal hearing</b> By: Public Service Commission	1		<input type="radio"/> Yes <input type="radio"/> No
20	5/15/2014	<b>Exhibit MDU-1</b> By: Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.	1		<input type="radio"/> Yes <input type="radio"/> No
21	5/15/2014	<b>Exhibit MDU-2</b> By: Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.	1		<input type="radio"/> Yes <input type="radio"/> No
22	5/15/2014	<b>Exhibit MDU-3</b> By: Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.	1		<input type="radio"/> Yes <input type="radio"/> No
23	5/15/2014	<b>Exhibit MDU-4</b> By: Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.	1		<input type="radio"/> Yes <input type="radio"/> No
24	5/15/2014	<b>Exhibit MDU-5</b> By: Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.	1		<input type="radio"/> Yes <input type="radio"/> No
25	5/15/2014	<b>Exhibit MDU-6</b> By: Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.	1		<input type="radio"/> Yes <input type="radio"/> No
26	5/15/2014	<b>Exhibit MDU-7</b> By: Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.	2		<input type="radio"/> Yes <input type="radio"/> No
27	5/15/2014	<b>Exhibit MDU-8</b> By: Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.	1		<input type="radio"/> Yes <input type="radio"/> No
28	5/15/2014	<b>Exhibit MDU-9</b> By: Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.	6		<input type="radio"/> Yes <input type="radio"/> No
29	5/15/2014	<b>Exhibit MDU-10</b> By: Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.	6		<input type="radio"/> Yes <input type="radio"/> No
30	5/15/2014	<b>Exhibit MDU-11</b> By: Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.	12		<input type="radio"/> Yes <input type="radio"/> No
31	5/15/2014	<b>Exhibit A</b> By: Capital Electric Cooperative Inc.	1		<input type="radio"/> Yes <input type="radio"/> No
32	5/15/2014	<b>Exhibit B</b> By: Capital Electric Cooperative Inc.	1		<input type="radio"/> Yes <input type="radio"/> No
33	5/15/2014	<b>Exhibit C</b> By: Capital Electric Cooperative Inc.	1		<input type="radio"/> Yes <input type="radio"/> No
34	5/15/2014	<b>Exhibit D</b> By: Capital Electric Cooperative Inc.	1		<input type="radio"/> Yes <input type="radio"/> No
35	5/15/2014	<b>Exhibit H</b> By: Capital Electric Cooperative Inc.	8		<input type="radio"/> Yes <input type="radio"/> No
36	5/15/2014	<b>Exhibit list</b> By: Wade Mann, ALJ - Office of Administrative Hearings	2		<input type="radio"/> Yes <input type="radio"/> No
37	5/15/2014	<b>Docketed in error</b> By: Public Service Commission	1		<input type="radio"/> Yes <input type="radio"/> No
38	5/15/2014	<b>Letter closing OAH file</b> By: Wade C. Mann, ALJ - Office of Administrative Hearings	1		<input type="radio"/> Yes <input type="radio"/> No

12/9/2014

Doc	Filed	Description	Pages:	Exhibit:	Certified to Court
39	5/27/2014	<b>Proposed Findings of Fact, Conclusions of Law and Order</b> By: Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. by Daniel Kuntz, Assoc. Gen. Counsel	11		<input type="radio"/> Yes <input type="radio"/> No
40	5/28/2014	<b>Proposed Findings of Fact, Conclusions of Law and Order</b> By: Capital Electric Cooperative Inc. by Matthew Olson, Pringle&Herigstad, P.C.	9		<input type="radio"/> Yes <input type="radio"/> No
41	5/30/2014	<b>Electronic record of May 30, 2014 work session</b> By: Public Service Commission	1		<input type="radio"/> Yes <input type="radio"/> No
42	6/13/2014	<b>Request for Oral Argument</b> By: Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. by Daniel Kuntz, Assoc. Gen. Counsel	3		<input type="radio"/> Yes <input type="radio"/> No
43	6/19/2014	<b>Objection to MDU's Request for Oral Argument</b> By: Capital Electric Cooperative Inc. by Matthew Olson, Pringle&Herigstad, P.C.	5		<input type="radio"/> Yes <input type="radio"/> No
44	6/19/2014	<b>Electronic record of June 12, 2014 work session</b> By: Public Service Commission	1		<input type="radio"/> Yes <input type="radio"/> No
45	6/25/2014	<b>Electronic record of June 20, 2014 work session</b> By: Public Service Commission	1		<input type="radio"/> Yes <input type="radio"/> No
46	6/25/2014	<b>Commission Motion granting request for oral argument</b> By: Public Service Commission	1		<input type="radio"/> Yes <input type="radio"/> No
47	6/26/2014	<b>Letter requesting OAH to reopen case</b> By: Public Service Commission	1		<input type="radio"/> Yes <input type="radio"/> No
48	6/26/2014	<b>Letter regarding Court Reporter</b> By: Public Service Commission	1		<input type="radio"/> Yes <input type="radio"/> No
49	6/27/2014	<b>Letter enclosing Commission Motion</b> By: Public Service Commission	2		<input type="radio"/> Yes <input type="radio"/> No
50	7/10/2014	<b>Notice of Prehearing Conference</b> By: Wade Mann, ALJ - Office of Administrative Hearings	2		<input type="radio"/> Yes <input type="radio"/> No
51	7/11/2014	<b>Letter reopening OAH file effective May 14, 2014</b> By: Office of Administrative Hearings by Wade C. Mann, Director	1		<input type="radio"/> Yes <input type="radio"/> No
52	7/14/2014	<b>Notice of Oral Argument and Pre-Argument Order</b> By: Wade Mann, ALJ - Office of Administrative Hearings	2		<input type="radio"/> Yes <input type="radio"/> No
53	7/23/2014	<b>Electronic record of July 11, 2014 pre-hearing conference</b> By: Public Service Commission	1		<input type="radio"/> Yes <input type="radio"/> No
54	7/22/2014	<b>Capital Electric Coop's Brief in Opposition to MDU's Application</b> By: Capital Electric Cooperative Inc. by Matthew Olson, Pringle&Herigstad, P.C.	25		<input type="radio"/> Yes <input type="radio"/> No
55	7/22/2014	<b>MDU's Brief in Support of Application</b> By: Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. by Daniel Kuntz, Assoc. Gen. Counsel	18		<input type="radio"/> Yes <input type="radio"/> No
56	7/30/2014	<b>Electronic record of July 28, 2014 oral arguments</b> By: Public Service Commission	1		<input type="radio"/> Yes <input type="radio"/> No
57	9/4/2014	<b>Late-filed Exhibit G – Voltage Report</b> By: Capital Electric Cooperative Inc. by Matthew Olson, Pringle&Herigstad, P.C.	5		<input type="radio"/> Yes <input type="radio"/> No
58	9/4/2014	<b>Late-filed Exhibit I – Outage Report</b> By: Capital Electric Cooperative Inc. by Matthew Olson, Pringle&Herigstad, P.C.	5		<input type="radio"/> Yes <input type="radio"/> No

12/9/2014

Doc	Filed	Description	Pages:	Exhibit:	Certified to Court
59	9/17/2014	<b>Commission Motion adopting Findings of Fact, Conclusions of Law and Order</b> By: Public Service Commission	1		<input type="radio"/> Yes <input type="radio"/> No
60	9/17/2014	<b>Findings of Fact, Concl. of Law &amp; Order with Dissenting Opinion of Comm. Brian P. Kalk</b> By: Public Service Commission	13		<input type="radio"/> Yes <input type="radio"/> No
61	9/22/2014	<b>Affidavit of Service, Cert. &amp; Reg. Mail – Findings of Fact, Conclu. of Law &amp; Order</b> By: Public Service Commission	14		<input type="radio"/> Yes <input type="radio"/> No
62	9/23/2014	<b>Letter closing OAH file</b> By: Wade Mann, ALJ - Office of Administrative Hearings	1		<input type="radio"/> Yes <input type="radio"/> No
63	9/24/2014	<b>Return receipt – 7013-2250-0001-0313-8839</b> By: USPS	1		<input type="radio"/> Yes <input type="radio"/> No
64	9/25/2014	<b>Return receipt – 7013-2250-0001-0313-8846</b> By: USPS	1		<input type="radio"/> Yes <input type="radio"/> No
65	10/16/2014	<b>APPEAL - Notice of Appeal and Specifications of Error</b> By: Capital Electric Cooperative Inc. by Matthew Olson, Pringle&Herigstad, P.C.	6		<input type="radio"/> Yes <input type="radio"/> No
66	10/16/2014	<b>APPEAL – Undertaking on Appeal to District Court</b> By: Capital Electric Cooperative Inc. by Matthew Olson, Pringle&Herigstad, P.C.	3		<input type="radio"/> Yes <input type="radio"/> No
67	10/31/2014	<b>APPEAL – Notice to Appellant of Estimated Costs</b> By: Public Service Commission	4		<input type="radio"/> Yes <input type="radio"/> No
68	10/31/2014	<b>APPEAL – e-file to Court with acceptance - Notice to Appellant of Estimated Costs</b> By: Public Service Commission	4		<input type="radio"/> Yes <input type="radio"/> No
69	10/31/2014	<b>APPEAL – e-file to Court with acceptance - Affidavit of Service by Regular Mail</b> By: Public Service Commission	4		<input type="radio"/> Yes <input type="radio"/> No
70	11/4/2014	<b>APPEAL - Notice of Assignment and Case Number</b> By: Burleigh County District Court	1		<input type="radio"/> Yes <input type="radio"/> No
71	11/14/2014	<b>APPEAL – notification of service – Notice of Appearance</b> By: Public Service Commission by Ilona A. Jeffcoat-Sacco	4		<input type="radio"/> Yes <input type="radio"/> No
72	11/14/2014	<b>APPEAL – notification of service – Certificate of Service, NOA</b> By: Public Service Commission by Ilona A. Jeffcoat-Sacco	4		<input type="radio"/> Yes <input type="radio"/> No

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

In the Matter of the Application )  
of MONTANA-DAKOTA UTILITIES CO., )  
a Division of MDU Resources Group, )  
Inc., for an Order and Certificate to )  
Extend Service to Menard, Inc. )  
near McKenzie, North Dakota )

Case No. PU-13-\_\_\_\_

**APPLICATION FOR PERMANENT AUTHORITY**

MONTANA-DAKOTA UTILITIES CO., for its Application to the Public Service Commission of North Dakota, respectfully alleges:

I.

The full name of Applicant is Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., and the post office address of its principal office is 400 North Fourth Street, Bismarck, North Dakota 58501. Applicant is a public utility subject to the jurisdiction of and regulation by the Public Service Commission of North Dakota, under Title 49, N.D.C.C., as amended. MDU Resources Group, Inc.'s Certificate of Incorporation is incorporated herein by reference, and the Commission is requested to take official notice of the same.

II.

This Application is made pursuant to the provisions of Chapter 49-03, N.D.C.C., as amended, and the Rules of Practice and Procedure promulgated by the Commission.

III.

Application has been requested by Menard Inc., hereinafter referred to as

"Customer," to provide electric service to it at a point located in the NE Section 33, Township 139N, Range 77W, Burleigh County, North Dakota as shown on the map attached hereto, marked Exhibit A, and made a part hereof by reference. Correspondence to the Customer should be directed to:

Jesse Cain  
5101 Menard Dr.  
Eau Claire, WI 54703

IV.

The service required by Customer at said location is three phase service, and the length of the three phase line extension to the customer's property line will be approximately 2,700 feet, as shown by Exhibit A. Capital Electric Cooperative (Capital Electric) is an electric supplier also providing electric service within the general area of this Customer. Montana-Dakota's extension of its three phase underground service will cross under Capital's single phase overhead line currently feeding a rural residence. The line crossing is shown in yellow on Exhibit A. Capital Electric was notified of the Company's request for a Certificate of Public Convenience and Necessity by copy of this Application. The location of the proposed service is within the economic service area of Applicant and service will be extended under the provisions of the rules and regulations applicable thereto. It is Applicant's public utility obligation to furnish the requested service, and the public convenience and necessity requires, and will be served by, Applicant furnishing the requested service to this Customer at said location.

V.

Submitted as Exhibit B with this Application is an Appearance by Customer herein,

in which Customer states to the Commission that it desires electric service from Applicant as a public utility subject to the jurisdiction of, and regulation by, this Commission. In said Appearance, Customer also waives Notice of Opportunity for Hearing and Notice of Hearing upon this Application, or a hearing thereon, and requests the Commission to issue an Order and Certificate of Public Convenience and Necessity authorizing this requested and needed service.

VI.

WHEREFORE, Applicant requests the entry of an Order and Certificate of Public Convenience and Necessity authorizing Applicant to extend the requested and needed service to Customer.

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

By: Tamie A. Aberle  
Tamie A. Aberle  
Director – Regulatory Affairs



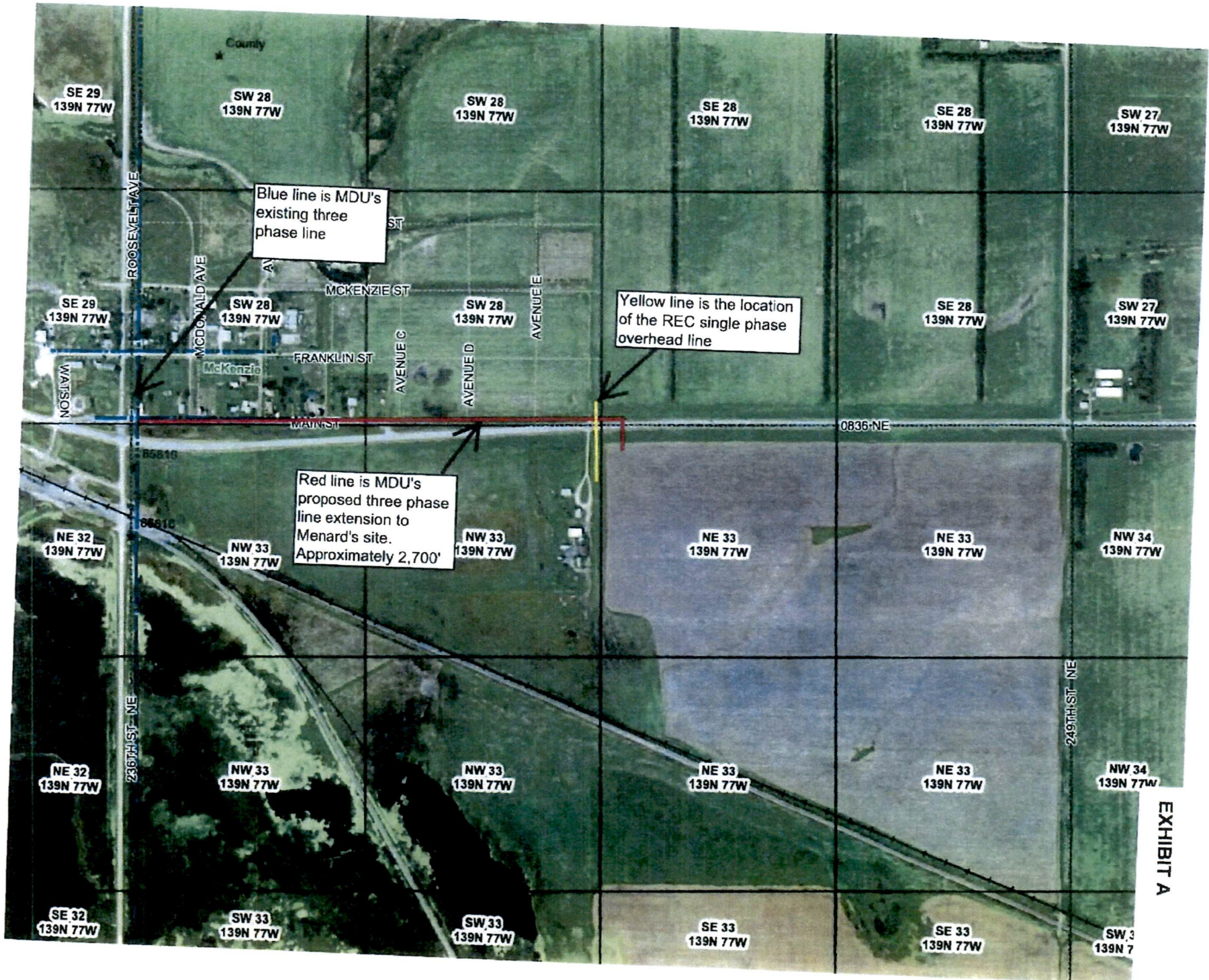


EXHIBIT A

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF NORTH DAKOTA

In the Matter of the Application of  
Montana-Dakota Utilities Co.,  
a Division of MDU Resources Group, Inc.

Case No. \_\_\_\_\_

**APPEARANCE BY CUSTOMER**

*Monard*  
Monards, Inc.

hereinafter referred to as "Customer", hereby makes a voluntary appearance in this matter and states the following to the Public Service Commission ("Commission"):

That Customer desires electric service from Montana-Dakota Utilities Co. as a public utility subject to the jurisdiction of, and regulation by, the Commission, and has requested said public utility to provide Customer with electric service at the following location(s):

- In the NE ¼; Section 33; Township 139N; Range 77W; Burleigh County, North Dakota.

That Customer is in need of electric service at said locations for the purpose of construction and operation of a manufacturing and distribution facility.

That Customer waives notice of opportunity for hearing and notice of hearing upon said Application, or a hearing thereon, and requests the Commission to issue an Order and Certificate of Public Convenience and Necessity authorizing this requested and needed electric service, and that provisions be made therein authorizing extension of electric service.

That all the allegations of the Application herein are true and correct.

WHEREFORE, the undersigned, being the Customer involved herein, prays for the entry of an Order and Certificate of Public Convenience and Necessity by the Commission,

authorizing the Applicant to extend the requested and needed electric service to Customer at said location, subject to such appropriate and proper conditions to be appended to and made a part of such Certificate as the Commission may determine, and for such other and further relief as may be proper in the premises.

Customer:

Menards, Inc.

By: [Signature]  
~~Jesse Cain, Project Manager~~  
Troy Anderson

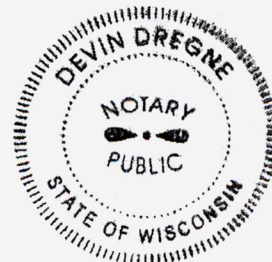
Dated: 9/16/13

STATE OF Wisconsin )

County of Eau Claire )

On this 16<sup>th</sup> day of September, in the year 2013, before me personally appeared Troy Anderson, known to be to be the ~~General Manager of Store~~ General Manager of Store of the limited liability company that is described in and that executed the within instrument, and acknowledged to me that such limited liability company executed the same.

[Signature]  
Notary Public  
*my commission is permanent*



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

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

Case No. PU-13-871


**PROTEST**

**January 15, 2014**

Capital Electric Cooperative, Inc., hereby protests the application of Montana-Dakota Utilities Co. for a Certificate of Public Convenience and Necessity to extend electric service to Menard, Inc. for a commercial site near McKenzie, North Dakota; which application was filed on November 25, 2013. Capital Electric Cooperative, Inc., further requests the PSC to hold a hearing and authorize discovery in this matter pending a hearing.

Dated this 15<sup>th</sup> day of January, 2015.

PRINGLE & HERIGSTAD, P.C.

By: 

Carol K. Larson - #04406

Matthew H. Olson - #06182

Attorneys for Capital Electric Cooperative, Inc.

Pringle & Herigstad, P.C.

2525 Elk Drive

PO Box 1000

Minot, ND 58702-1000

(701) 852-0381

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

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

**Case No. PU-13-871**

**NOTICE OF HEARING  
February 26, 2014**

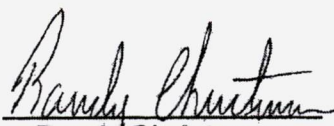
On November 25, 2013, Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., filed an application to extend electric service to Menard, Inc. at a location in Section 33, T 139N, R 77W, Burleigh County, North Dakota. On January 16, 2014, a Protest and request for hearing was received from Capital Electric Cooperative, Inc.

Please take notice that a **public hearing** on these matters will be held **Friday, May 2, 2014, at 8:30 a.m. CDT, in the Commission Hearing Room, 12<sup>th</sup> Floor, State Capitol, Bismarck, North Dakota 58505.** The issues to be considered are:

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?

For more information contact the Public Service Commission, State Capitol, Bismarck, North Dakota 58505, 701-328-2400; or Relay North Dakota 1-800-366-6888 TTY. If you require any auxiliary aids or services, such as readers, signers, or Braille materials, please notify Gloria Geiger, Interim Secretary, at least 24 hours in advance.

**PUBLIC SERVICE COMMISSION**

  
**Randy Christmann**  
Commissioner

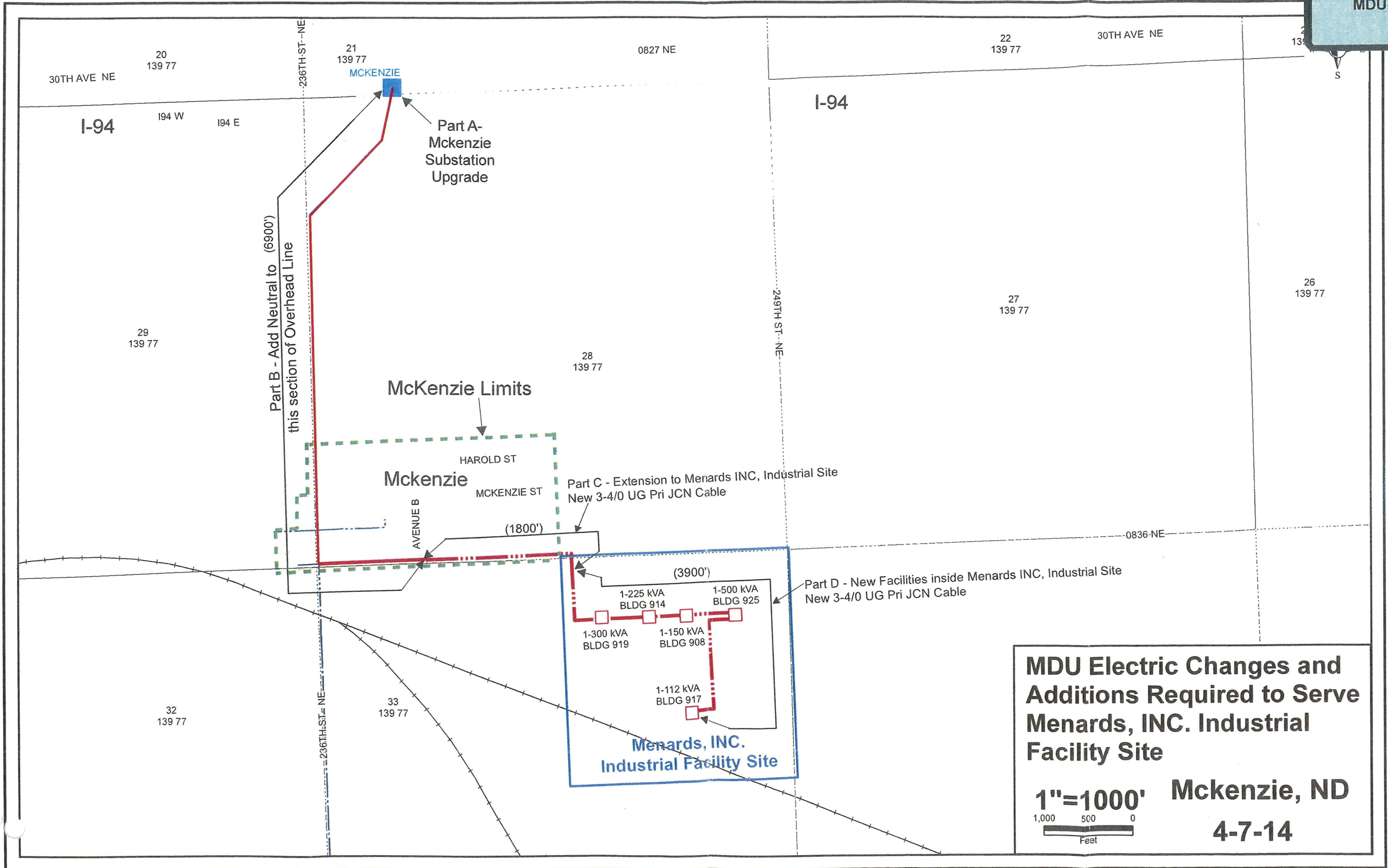
  
**Brian P. Kalk**  
Chairman

  
**Julie Fedorchak**  
Commissioner

9    **PU-13-871**    Filed: 2/26/2014    Pages: 1  
Notice of Hearing

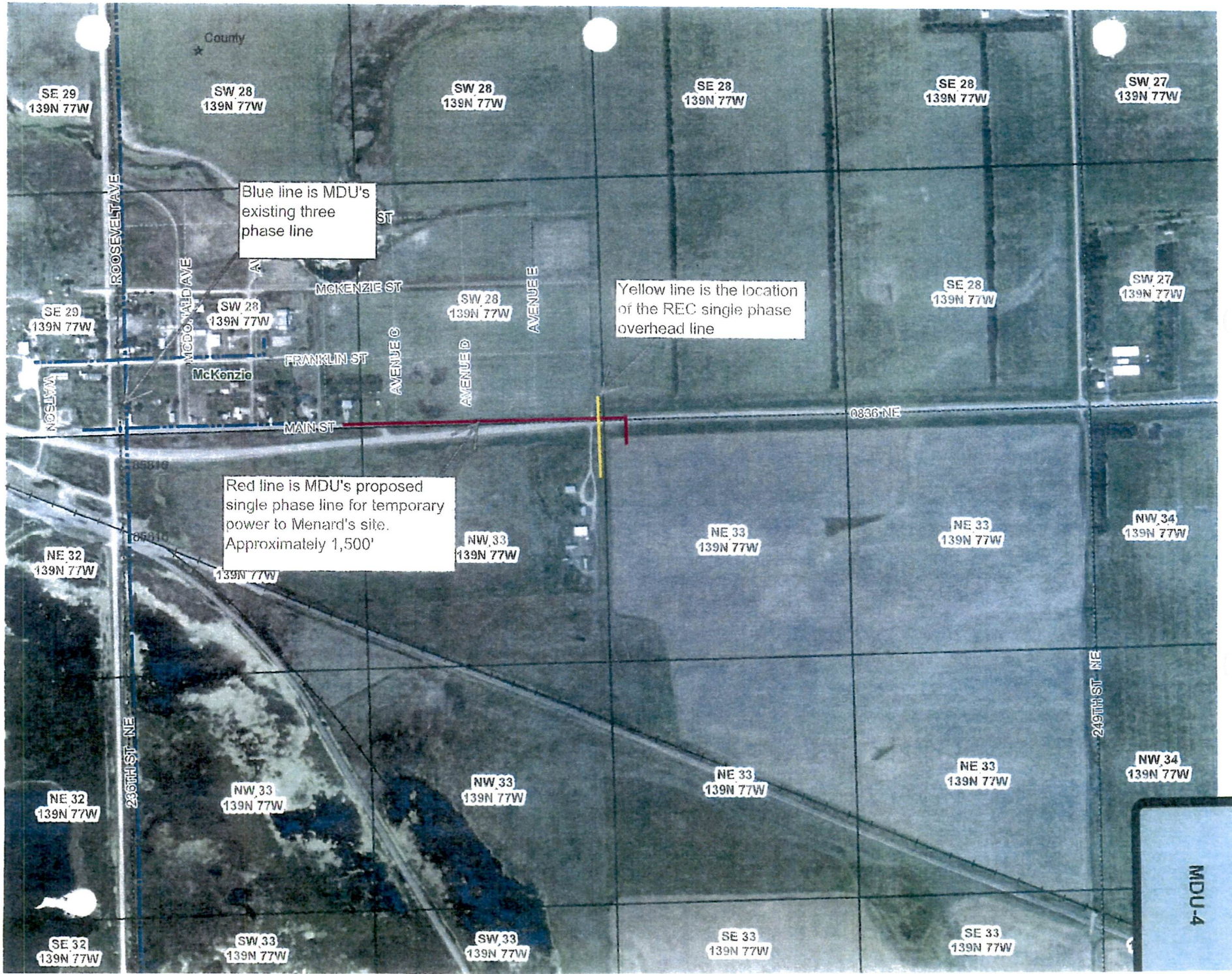


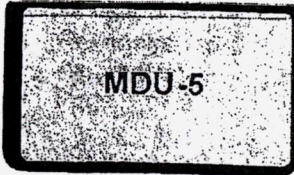




**MDU Electric Changes and Additions Required to Serve Menards, INC. Industrial Facility Site**

**1"=1000'** McKenzie, ND  
 1,000 500 0  
 Feet  
**4-7-14**





**COST ESTIMATE Part C**

Project:

Costs to Extend Electric Service to Menards INC Industrial Facility Site

<i>CONSTRUCTION</i>		<u>Item</u>	<u>Cost each</u>	<u>Feet or Quantity</u>	<u>Amount</u>
1)	Material	Stores Material			\$13,936
					Material Total=
					\$13,936
Unloaded					
2)	Direct Labor		<u>Units</u>	<u>Quantity</u>	<u>Rate/Hour</u>
		Line Crew	Hours	80	\$38.00
		Engineering	Hours	12	\$48.00
		Engineering Asst.	Hours	0	\$38.00
		Construction Supv.	Hours	0	\$31.00
		Drafting	Hours	0	\$15.00
			Hours	0	\$0
					Total Labor=
					\$3,616
2a)	Labor Loading				Payroll Loading
					\$1,700
					Total Labor w>Loading
					\$5,316
3)	Contract Charge		<u>Quantity</u>	<u>Cost Each</u>	
		Trenching	1600	\$3.00	\$4,800
		Boring	200	\$14.00	\$2,800
					TOTAL =
					\$7,600
4)	Transportation & Equipment		<u>Units</u>	<u>Quantity</u>	<u>\$Rate/Unit</u>
		Line Truck	Hours	20	35.00
		Crew Pickup	Miles	125	1.65
		Engineering Car	Miles	40	0.50
		R/W CAR	Miles	0	0.60
		SPV. PICK.	Miles	0	0.70
		Man Lift Truck	Hours	20	23.00
					TOTAL =
					\$1,386
					SUB TOTAL =
					\$28,237
15.52				% OVERHEAD	=
					\$4,382
					CONSTRUCTION TOTAL =
					\$32,619
<i>RETIREMENT</i>					
1)	Salvage				\$0
2)	Cost of Removal		<u>Man-hours</u>	<u>Rate/Hr(\$)</u>	
		CREW MAN-HRS =	0	28.50	\$0
		LINE TRK HRS =	0	32.00	\$0
		CREW PU. MIS =	0	1.65	\$0
		HRS =	0	10.00	\$0
					TOTAL =
					\$0
					RETIRE TOTAL =
					\$0
					PROJECT TOTAL =
					\$32,619



**COST ESTIMATE Part D**

Project: Costs of new Electric Service inside Menards INC Industrial Facility Site

<i>CONSTRUCTION</i>		<u>Item</u>	<u>Cost each</u>	<u>Feet or Quantity</u>	<u>Amount</u>
1)	Material	Stores Material			\$30,894
					Material Total=
					<u>\$30,894</u>
2)	Direct Labor			Unloaded	
		<u>Units</u>	<u>Quantity</u>	<u>Rate/Hour</u>	
	Line Crew	Hours	176	\$38.00	\$6,688
	Engineering	Hours	28	\$48.00	\$1,344
	Engineering Asst.	Hours	0	\$38.00	\$0
	Construction Supv.	Hours	0	\$31.00	\$0
	Drafting	Hours	0	\$15.00	\$0
		Hours	0		\$0
					Total Labor=
					<u>\$8,032</u>
2a)	Labor Loading			Payroll Loading	\$3,775
					Total Labor w/Loading
					<u>\$11,807</u>
3)	Contract Charge		<u>Quantity</u>	<u>Cost Each</u>	
	Trenching		3800	\$3.00	\$11,400
					TOTAL =
					<u>\$11,400</u>
4)	Transportation & Equipment	<u>Units</u>	<u>Quantity</u>	<u>\$Rate/Unit</u>	
	Line Truck	Hours	44	35.00	\$1,540
	Crew Pickup	Miles	275	1.65	\$454
	Engineering Car	Miles	120	0.50	\$60
	R/W CAR	Miles	0	0.60	\$0
	SPV. PICK.	Miles	0	0.70	\$0
	Man Lift Truck	Hours	44	23.00	\$1,012
					TOTAL =
					<u>\$3,066</u>
					SUB TOTAL =
					\$57,167
15.52					% OVERHEAD =
					<u>\$8,872</u>
					CONSTRUCTION TOTAL =
					<u>\$66,039</u>
<i>RETIREMENT</i>					
1)	Salvage				\$0
2)	Cost of Removal		<u>Man-hours</u>	<u>Rate/Hr(\$)</u>	
	CREW	MAN-HRS =	0	28.50	\$0
	LINE TRK	HRS =	0	32.00	\$0
	CREW PU.	MIS =	0	1.65	\$0
		HRS =	0	10.00	\$0
					TOTAL =
					<u>\$0</u>
					RETIRE TOTAL =
					<u>\$0</u>
					PROJECT TOTAL =
					<u>\$66,039</u>



**COST ESTIMATE Part A**

Project: MDU Mckenzie Sub Changes required to Serve Menards INC, Industrial Facility.

<i>CONSTRUCTION</i>	<u>Item</u>	<u>Cost each</u>	<u>Feet or Quantity</u>	<u>Amount</u>
1)	Material	Stores Material		\$9,172
			Material Total=	<u>\$9,172</u>
2)	Direct Labor		Unloaded	
		<u>Units</u>	<u>Quantity</u>	<u>Rate/Hour</u>
	Line Crew	Hours	416	\$38.00
	Engineering	Hours	80	\$48.00
	Engineering Asst.	Hours	0	\$38.00
	Construction Supv.	Hours	0	\$31.00
	Drafting	Hours	0	\$15.00
		Hours	0	\$0
			Total Labor=	<u>\$19,648</u>
2a)	Labor Loading		Payroll Loading	<u>\$9,235</u>
			Total Labor w>Loading	<u>\$28,883</u>
3)	Contract Charge		<u>Quantity</u>	<u>Cost Each</u>
	Install Transformer Pad		1	\$5,000.00
	Install Recloser Pad		1	\$1,500.00
	Crane		1	\$800.00
	Low Boy Trailer		1	\$750.00
				\$0
			TOTAL =	<u>\$8,050</u>
4)	Transportation & Equipment	<u>Units</u>	<u>Quantity</u>	<u>\$Rate/Unit</u>
	Line Truck	Hours	104	35.00
	Crew Pickup	Miles	520	1.65
	Engineering Car	Miles	400	0.50
	R/W CAR	Miles	0	0.60
	SPV. PICK.	Miles	0	0.70
	Man Lift Truck	Hours	104	23.00
			TOTAL =	<u>\$7,090</u>
			SUB TOTAL =	\$53,195
	15.52		% OVERHEAD =	<u>\$8,256</u>
			CONSTRUCTION TOTAL =	<u>\$61,451</u>

*RETIREMENT*

1)	Salvage			\$0
2)	Cost of Removal		<u>Man-hours</u>	<u>Rate/Hr(\$)</u>
	CREW MAN-HRS =		0	28.50
	LINE TRK	HRS =	0	32.00
	CREW PU.	MIS =	0	1.65
		HRS =	0	10.00
			TOTAL =	<u>\$0</u>
			RETIRE TOTAL =	<u>\$0</u>
			PROJECT TOTAL =	<u>\$61,451</u>

## COST ESTIMATE Part B

Project. Mckenzie - Add Neutral to existing overhead line, Convert Town from 2.4 kV to 12kV, and convert 1200 feet of single phase overhead to three phase.

<i>CONSTRUCTION</i>	<u>Item</u>	<u>Cost each</u>	<u>Feet or Quantity</u>	<u>Amount</u>
1)	Material	Stores Material		\$5,798
			Material Total=	\$5,798
2)	Direct Labor		Unloaded	
		<u>Units</u>	<u>Quantity</u>	<u>Rate/Hour</u>
	Line Crew	Hours	288	\$38.00
	Engineering	Hours	40	\$48.00
	Engineering Asst.	Hours	0	\$38.00
	Construction Supv.	Hours	0	\$31.00
	Drafting	Hours	0	\$15.00
		Hours	0	\$0
			Total Labor=	\$12,864
2a)	Labor Loading		Payroll Loading	\$6,046
			Total Labor w>Loading	\$18,910
3)	Contract Charge		<u>Quantity</u>	<u>Cost Each</u>
	Trenching		0	\$3.00
	Boring		0	\$14.00
			1	\$0
			1	\$0
				\$0
			TOTAL =	\$0
4)	Transportation & Equipment		<u>Units</u>	<u>Quantity</u>
	Line Truck	Hours	48	35.00
	Crew Pickup	Miles	300	1.65
	Engineering Car	Miles	400	0.50
	R/W CAR	Miles	0	0.60
	SPV. PICK.	Miles	0	0.70
	Man Lift Truck	Hours	48	23.00
				\$1,104
			TOTAL =	\$3,479
			SUB TOTAL =	\$28,187
	15.52		% OVERHEAD =	\$4,375
			CONSTRUCTION TOTAL =	\$32,562
 <i>RETIREMENT</i>				
1)	Salvage			\$0
2)	Cost of Removal		<u>Man-hours</u>	<u>Rate/Hr(\$)</u>
	CREW	MAN-HRS =	0	28.50
	LINE TRK	HRS =	0	32.00
	CREW PU.	MIS =	0	1.65
		HRS =	0	10.00
			TOTAL =	\$0
			TOTAL =	\$0
			RETIRE TOTAL =	\$0
			PROJECT TOTAL =	\$32,562

BOARD OF RAILROAD COMMISSIONERS

STATE OF NORTH DAKOTA

\*\*\*\*\*

In the matter of the application of the Northern Power & Light Company of Nebraska, South Dakota, for a Certificate of Public Convenience and Necessity to furnish electric service in the village of McKenzie, North Dakota.

CASE NO. 2971.

FINDINGS AND ORDER

Upon consideration of the above entitled application at a regular meeting held at its offices at Bismarck, North Dakota, on the 16th day of August, 1928, the Board of Railroad Commissioners of the State of North Dakota finds that public convenience and necessity require the construction and operation of an electric distribution system in the village of McKenzie, North Dakota, as set forth in said application of the Northern Power & Light Company; and, pursuant to motion this day adopted,

IT IS ORDERED, that said application be, and the same is hereby granted, and that certificate of public convenience and necessity as prayed for be issued.

Dated at Bismarck, North Dakota, this 16th day of August, 1928.

30 PU-13-871 Filed: 5/15/2014 Pages: 12 Exhibit MDU-11

BY THE COMMISSION:

FAY HARDING,

President.

C. W. McDONNELL,

Commissioner.

BEN C. LARKIN,

Commissioner.

Attest:

MARY E. PARSONS,

Secretary.

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

BOARD OF RAILROAD COMMISSIONERS

STATE OF NORTH DAKOTA

Certificate of Public Convenience and Necessity

Certificate No. 86

Case No. 2971

THIS IS TO CERTIFY That public convenience and necessity require, and permission is hereby granted for the construction and operation of

an electric distribution ~~plant~~ system at MCKENZIE, North Dakota,

by the NORTHERN POWER & LIGHT COMPANY This certificate is issued in accordance with the report and order of this Board, dated August 16, 1928, in Case No. 2971, and is subject to the conditions and limitations noted thereon.

CONDITIONS: This certificate is conditioned upon the said NORTHERN POWER & LIGHT COMPANY securing the consent, franchise, permit, ordinance, or other authority of the proper municipal or other public authority for the exercise of the rights and privileges granted herein.

Dated at Bismarck, North Dakota, this 16th day of August, 1928.

BOARD OF RAILROAD COMMISSIONERS

ATTEST:

Handwritten signature of Secretary, MANDARSON, SECRETARY

Handwritten signature of President, FAY STANDING, PRESIDENT

RESOLUTION AND ORDINANCE

BOARD OF SUPERVISORS, MCKENZIE TOWNSHIP, BURLEIGH COUNTY,  
NORTH DAKOTA:

WHEREAS, that portion of the Township known as the Village of McKenzie, North Dakota, is desirous of receiving electrical energy from the Northern Power & Light Company for the purpose of lighting the streets, alleys and public places of the Village of McKenzie and furnishing and selling to the inhabitants thereof, and

WHEREAS, this Board believes that said service will be of material benefit to the Township.

NOW, THEREFORE, BE IT RESOLVED AND ORDAINED BY THE BOARD OF SUPERVISORS OF THE TOWNSHIP OF MCKENZIE, COUNTY OF BURLEIGH, STATE OF NORTH DAKOTA:

1. That Northern Power & Light Company, a Corporation of the State of Delaware, duly authorized and licensed to transact business in the State of North Dakota, its successors and assigns, be and it is hereby granted a right-of-way for the erection of an electric light system, and is hereby authorized, empowered and granted the right to erect, construct, extend, operate and maintain an electric transmission and distribution system, including poles, wires, guys, fixtures, sub-stations, appliances and appurtenances, thereto, upon, over and across those certain streets, alleys, highways and public grounds which are under the care and supervision of this Board, situated in the Township of McKenzie, County of Burleigh, State of North Dakota, and more particularly described as follows, to-wit: That portion of the Civil Township of McKenzie, situated on the Southeast quarter (SE<sup>1</sup>/<sub>4</sub>) of Section 28 and the Southwest quarter (SW<sup>1</sup>/<sub>4</sub>) of Section 28, Township 139 N., Range 77 W., known as the Village of McKenzie, Burleigh County, North Dakota; and the Northern Power & Light Company shall not be required to extend any lines beyond 300 feet from their lines when and as constructed unless Customer shall make satisfactory agreement with the Company.

2. All rates for electric light and power and for electric cooking shall be subject to the supervision of the Board of Railway Commissioners of the State of North Dakota.

Street Lighting - All Night Burning. All white way posts and special street lighting fixtures to be installed and maintained at the expense of the Township of McKenzie, Burleigh County, North Dakota.

100 Candle Power Lamp	- -	\$3.00	per month
250 " " "	- -	5.00	" "
400 " " "	- -	8.00	" "
600 " " "	- -	12.00	" "
Minimum charge	\$	<u>25.00</u>	per month.

The size and location of street lamps to be at all times designated by the Town Board or its Lighting Committee. The Town Board may from time to time order such additional street lights as it may desire at the same rate per lamp as above described, provided however, that such additional lamps shall not be more than 300 feet from any lamp then in service. Broken and burned out street lamps to be paid for by the Town and the Company to install them. Provided however, that the Town shall have its police officers notify the Company of any of the lamps that require repairs or replacement, and no rebate shall be made for such lamps or lights that are out, until twenty-four hours have elapsed after such notice.

3. In case the Customer's service has been discontinued for non-payment of bills, a charge of Two Dollars (\$2.00) may be made by the Company, which charge, together with all outstanding and unpaid bills and indebtedness owing by such customer to the Company for electric energy, appliances, merchandise or labor and services furnished and supplied and/or sold to such customer, shall be paid before the Company shall be obligated to resume its service to said Customer.

4. Meters will be furnished without charge to all customers, but the Company shall have the right to require a deposit from each person, firm or corporation requesting service of a sum equal to two (2) months' estimated bills for such party, or, at the option of the Company, the sum of Five Dollars (\$5.00) from each such party, before it shall be required to furnish or supply electric energy to any such person, firm or corporation, which amount shall be returned to such party upon payment for all electric energy furnished and supplied and the discontinuance of patronage.

5. Said poles, wires, guys, fixtures, sub-stations, appliances and appurtenances thereto, shall be so placed, erected, and established on said streets, highways and public grounds as will least inconvenience the public and as not to interfere with the use of said street, highways and public grounds for passage and travel by the public.

6. The Northern Power & Light Company shall indemnify and save harmless the Township of McKenzie and the Board of Supervisors thereof, from all damages which may be awarded against said township or said Board in favor of any person or persons, corporation or corporations, resulting from the erection, construction, operation and maintenance of said above described electric transmission and distribution systems, over, across or upon said streets, highways and public grounds.

7. Acceptance of this grant by Northern Power & Light Company shall be evidenced by a writing, which shall be filed with the Township Clerk within sixty (60) days after date of the enactment thereof, and in the event such written acceptance is not so filed within said period of time, this grant may, at the option of the Board of Supervisors, be declared null and void.

C. W. Thompson  
G. A. Hughes  
D. B. Luther  
Board of Supervisors.

Passed and Approved this

29 day of May,

1928.

ATTEST: M. A. Linton

A1-

BILL OF SALE and  
ASSIGNMENT OF ELECTRIC FRANCHISE

This indenture made and entered into this 13 day of Aug 1934, by and between the Northern Power and Light Company, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware and duly authorized to transact business in the State of North Dakota, party of the first part, and North Dakota Power and Light Company, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware and duly authorized to transact business in the State of North Dakota, herein-after called the second party;

WITNESSETH:

That whereas the first party owns an electric distributing system in the Village of McKenzie, McKenzie Township, Burleigh County, North Dakota, and have sold the same to the second party and desire by this instrument to convey to the second party said electric distributing system and all property appurtenant thereto or connected therewith;

Now, therefore, this indenture witnesseth that for and in consideration of the premises and for the sum of One Dollar (\$1.00) and other good and valuable consideration in hand paid to the first party by the second party, the receipt of which by the first party is hereby acknowledged, the first party has granted, bargained, sold, conveyed, assigned, transferred and set over to the second party all the property assets, rights, privileges, contracts and franchises of any and every kind and character of the first party of the electric distribution system in the Village of McKenzie, North Dakota, consisting of meters, transmission lines, substations, conduits, insulators, wires, poles, switchboards, transformers, etc., used in connection with said electric distributing system together with a certain franchise passed and approved on the 29th day of May, 1928, by the Board of Supervisors of McKenzie Township, Burleigh County, North Dakota, granting the franchise to the Northern Power & Light Company in that portion of the Civil Township of McKenzie situated on the Southeast Quarter (SE $\frac{1}{4}$ ) of Section Twenty-nine (29) and the Southwest Quarter (SW $\frac{1}{4}$ ) of Section Twenty-eight (28) Township One Hundred Thirty nine (139) N, Range Seventy-seven (77) W, known as the Village of McKenzie, Burleigh County, North Dakota.

To have and to hold the hereinabove described property, assets, franchises and privileges unto the second party, its successors and assigns forever.

The first parties covenant that they are the lawful owners by a good and absolute title of all of the above described property and have full right to convey the same and that the same are free and clear of all liens and encumbrances of whatsoever kind and nature and that they will forever warrant and defend the same unto the said second party, its successors and assigns against all lawful claims whatsoever.

The General Office and address of both parties hereto is Huron, South Dakota.

In Witness whereof, the said Northern Power and Light Company, a corporation, has caused this instrument to be executed in its corporate name by its officers duly authorized and its corporate seal to be hereto affixed all as of the day and year first above written.

NORTHERN POWER & LIGHT COMPANY

By E. J. Stike  
Vice-President

ATTEST:

H. Thompson  
Secretary

ASSIGNMENT OF ELECTRIC FRANCHISE

KNOW ALL MEN BY THESE PRESENTS, that Dakota Public Service Company, a Delaware Corporation, having its principal offices and post office address at Huron, South Dakota, ASSIGNOR, does hereby sell, assign, transfer, and set over unto Montana-Dakota Utilities Co., a Delaware Corporation, 831 Second Avenue South, Minneapolis 2, Minnesota, ASSIGNEE, that certain electric franchise granted to ASSIGNOR, or its predecessor in interest, by the Township of Mc Kenzie, Burleigh County, North Dakota, as evidenced by a Resolution passed by the governing body of said municipality on the 29th day of May, 1928, together with all right, claim, title, and interest therein and all rights, benefits, and privileges thereunder.

Dated this 19th day of October, 1945.

DAKOTA PUBLIC SERVICE COMPANY

By [Signature]  
R. M. Heskett, President  
Attest [Signature]  
W. L. Hayes, Asst. Secretary

(CORPORATE SEAL)

ACCEPTANCE OF FRANCHISE

MONTANA-DAKOTA UTILITIES CO., a Delaware Corporation, 831 Second Avenue South, Minneapolis 2, Minnesota, hereby accepts all the terms, conditions, and provisions of that certain electric franchise granted to Dakota Public Service Company, a Delaware Corporation, having its principal offices and post office address at Huron, South Dakota, or its predecessors in interest by the Township of Mc Kenzie, Burleigh County, North Dakota as evidenced by a Resolution passed by the governing body of said municipality on the 29th day of May, 1928, said assignee agrees to abide by all the terms and provisions thereof.

Dated this 19th day of October, 1945.

MONTANA-DAKOTA UTILITIES CO.

By [Signature]  
Oscill W. Smith, Vice President  
Attest [Signature]  
F. B. Gamble, Asst. Secretary

(CORPORATE SEAL)

THIS IS TO CERTIFY that I have, this day, received and filed in my office, the original of the foregoing assignment of electric franchise and the acceptance thereof by Montana-Dakota Utilities Co., and that the foregoing is a true and correct copy of such original instruments.

Dated this 23 day of November 1945.

(Seal)  
(MUNICIPAL SEAL)  
m.a.f.

[Signature]  
Clerk-Auditor  
[Signature] No. Dakota

CERTIFIED TRANSCRIPT OF ELECTRIC FRANCHISE PROCEEDINGS

Ordinance No. 10

VILLAGE OF MCKENZIE, MCKENZIE TOWNSHIP, BURLEIGH COUNTY, N. D.

STATE OF NORTH DAKOTA )  
                                  ) SS.  
COUNTY OF                  )

I, the undersigned, as the recording officer of the Village of McKenzie of McKenzie Township, Burleigh County, North Dakota,

DO HEREBY CERTIFY: That attached hereto is a complete and exact transcript of all of the documents and proceedings relating to the granting of an electric franchise to MONTANA-DAKOTA UTILITIES CO. by the aforesaid municipality as evidenced by Ordinance No. 10 passed by the governing body of said municipality on the 19th day of April, 1948; that I have compared each of the attached copies of documents and proceedings pertaining thereto with the originals thereof, and that each attached copy is a true and correct transcript of the original instrument of which it purports to be a copy, namely:

(a) Application for electric franchise by MONTANA-DAKOTA UTILITIES CO.,

(b) Ordinance granting an electric franchise to MONTANA-DAKOTA UTILITIES CO.,

(c) Minutes of first meeting of the governing body of said municipality held March 23rd, 1948, at which meeting said ordinance was given its first reading,

(d) Minutes of second meeting of the governing body of said municipality held April 19th, 1948, at which meeting said ordinance was given its second reading and final passage,

(e) Acceptance of said electric franchise ordinance by MONTANA-DAKOTA UTILITIES CO.

(f) ~~Affidavit of Posting Ordinance, Affidavit of Substitution of xxx electric franchise ordinance.~~

(g) Certificate showing date of Election and Expiration of term of office of each member of the Governing Body.

I FURTHER CERTIFY: That the original of each of the above mentioned documents is on file in my office; and that insofar as I have knowledge or am informed, all legal requirements of the By-Laws of the governing body of said municipality and of the statutes of the State of North Dakota covering the granting of said franchise, have been legally and fully complied with.

IN WITNESS WHEREOF, I have hereunto subscribed my name as the recording officer of said municipality this 6th day of May,

NH

EXTRACT OF MINUTES FOR FIRST READING

Pursuant to due notice and call, a Township Board meeting of the City of McKenzie, Burleigh County, North Dakota, was duly held at the regular meeting place on Thursday, the 13 day of March, 2002, at 7 o'clock P.M.

Those present were: Roger Brown Paul Krutson  
Ernest Berglund Paul Krutson Sam Brown

Those absent were: NH

Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., having applied for an electric distribution franchise and proposed Ordinance No. \_\_\_\_\_ having been prepared and submitted for consideration herewith, it was moved by \_\_\_\_\_, and seconded by \_\_\_\_\_, that said Ordinance No. \_\_\_\_\_, the full title of which Ordinance is:

"AN ORDINANCE GRANTING TO MONTANA-DAKOTA UTILITIES CO., A DIVISION OF MDU RESOURCES GROUP, INC., A CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE FRANCHISE AND RIGHT TO CONSTRUCT, MAINTAIN AND OPERATE, WITHIN AND UPON, IN AND UNDER THE STREETS, ALLEYS, AND PUBLIC GROUNDS OF THE CITY OF MCKENZIE, BURLEIGH COUNTY, NORTH DAKOTA, AN ELECTRIC DISTRIBUTION SYSTEM FOR TRANSMITTING AND DISTRIBUTING ELECTRICITY FOR PUBLIC AND PRIVATE USE."

be given first reading.

Thereupon the presiding officer of the meeting put the motion to vote and the following vote was recorded:

Voting Yes: 3

Voting No: 0

The presiding officer then declared the motion duly passed and the Clerk read the ordinance for the first time.

Ernest Berglund  
Mayor - Chairman

ATTEST: Ernest Berglund  
Clerk-Auditor  
(Seal of Municipality)

EXTRACT OF MINUTES FOR SECOND READING AND FINAL PASSAGE

Pursuant to due notice and call, a \_\_\_\_\_ meeting of the City of McKenzie, Burleigh County, North Dakota, was duly held at the regular meeting place on \_\_\_\_\_ the day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_m.

Those present were \_\_\_\_\_

Those absent were \_\_\_\_\_

Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., having applied for an electric distribution franchise and proposed Ordinance No. \_\_\_\_\_ having been prepared and submitted for consideration in connection therewith, and said Ordinance having passed its first reading not less than seven days prior hereto, it was moved by \_\_\_\_\_ and seconded by \_\_\_\_\_, that said Ordinance No. \_\_\_\_\_, the full title of which Ordinance is:

"AN ORDINANCE GRANTING TO MONTANA-DAKOTA UTILITIES CO., A DIVISION OF MDU RESOURCES GROUP, INC., A CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE FRANCHISE AND RIGHT TO CONSTRUCT, MAINTAIN AND OPERATE, WITHIN AND UPON, IN AND UNDER THE STREETS, ALLEYS, AND PUBLIC GROUNDS OF THE CITY OF MCKENZIE, BURLEIGH COUNTY, NORTH DAKOTA, AN ELECTRIC DISTRIBUTION SYSTEM FOR TRANSMITTING AND DISTRIBUTING ELECTRICITY FOR PUBLIC AND PRIVATE USE."

be read the second time and given final passage, being thereby adopted, passed and approved.

Thereupon the presiding officer of the meeting, the Clerk having read the ordinance for the second time, put the motion to vote and the following vote was recorded: (for second reading and final passage)

Voting Yes: 5-2-1

Voting No: \_\_\_\_\_

The presiding officer then declared the motion duly passed and the Clerk read the ordinance for the first time

ATTEST: [Signature]  
Clerk-Auditor

\_\_\_\_\_  
Mayor - Chairman

(Seal of Municipality)

ORDINANCE NO. \_\_\_\_\_

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

CITY OF MCKENZIE, BURLEIGH COUNTY

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

BE IT ORDAINED BY

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

SECTION II. There is hereby granted to Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., a corporation, Grantee, its successors and assigns, subject to the limitations herein stated, the right and franchise to occupy now and use the streets, alleys and public grounds of the Municipality as now, or hereafter constituted, for the purpose of constructing, maintaining, and operating, within, upon, in and under the same, an electric distribution system for transmitting and distributing electricity for public and private use.

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

SECTION IV. This franchise shall not be exclusive and shall not be construed to prevent the Municipality from granting to any other party the right to use the streets, alleys, and public grounds of the Municipality for like purposes.

SECTION V. The Municipality reserves any right it may have, under its police power, or otherwise, to control or regulate the use of said streets, alleys, and public grounds by Grantee.

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

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

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

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

Passed the 17 day of April, 2011.

Approved this 18 day of April, 2011.

ATTEST: [Signature]  
Auditor

\_\_\_\_\_  
Mayor-Chairman

(Seal of the Municipality)

ND

ACCEPTANCE OF FRANCHISE

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

Dated this 2<sup>nd</sup> day of MAY, 2008.

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

By *Don F. Houch*  
President

ATTEST:

*[Signature]*  
Secretary

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

*Burt Fountain*  
Auditor *McKenzie, SD*

(SEAL OF MUNICIPALITY)

**CAPITAL ELECTRIC COOPERATIVE**

**APPLICATION FOR BUSINESS MEMBERSHIP AND ELECTRIC SERVICE**

The undersigned (hereinafter called the "Applicant") hereby applies for membership and agrees to purchase electric energy from Capital Electric Cooperative, Inc. (hereinafter called the "Cooperative"), and agree upon the terms and conditions (Back Page of this Document). The applicant acknowledges receipt of the by-laws from Capital Electric Cooperative, Inc.

\*\*\*\*\*PLEASE PRINT CLEARLY\*\*\*\*\*

Menard, Inc  
COMPANY NAME

39-098-9248 Yes  
FEDERAL ID # INCORPORATED?

Jesse Cain  
CONTACT PERSON

5701 Menard Dr.  
MAILING ADDRESS FOR BILL

Farm Chair, WI 57103  
CITY, STATE, ZIP

(715) 876-2124 (715) 577-0701  
TELEPHONE # CELL PHONE #

HAS COMPANY PREVIOUSLY RECEIVED SERVICE FROM CAPITAL ELECTRIC?  Yes  No

**IF YOU RENT:**

LANDLORD NAME & PHONE: \_\_\_\_\_

A security deposit of \$200.00 will be required of all service applicants residing in rental properties. Additionally, members having poor payment history or uncollectible accounts with CEC may be asked for a higher security deposit. The deposit must be paid in full or electric service will be subject to disconnect. The deposit will be returned to the applicant after 12 months of continuous good credit with the cooperative.

CEC will not provide a meter socket for any service terminating on a house or building. CEC will provide secondary conductors to the point of metering. All residential meter sockets for new construction must be located outside, on the house or building sidewall. Meter sockets shall be located on the side of the house or building (including side or back of attached garage) nearest CEC's service point (i.e. transformer, secondary pedestal or stub out) unless that location is not practical as determined in the sole discretion of CEC. In such cases, the meter facility shall be located as directed by CEC. The side wall of the house or building (including side or back of attached garage) is construed to mean the outermost side, which is not considered the front or back of the house or building. All residential meter sockets for service upgrades shall also be subject to the above criteria if CEC is to provide a new service line as part of

DATE FOR SERVICE TO BEGIN: ± 10/31/14

TBD  
ADDRESS OF ELECTRIC SERVICE

**IF NEW CONSTRUCTION:**

NE 1/4 Section 33 Township 139 N Range 72  
LEGAL DESCRIPTION OF SERVICE (SUBDIVISION, BLOCK, LOT)

PLEASE INDICATE ALL HEATING TYPES:

Gas  Fuel Oil  Propane  Geothermal Heat Pump  
 Electric Boiler  Floor Heat  Unit Heater  
 Air-to-Air Heat Pump  Plenum Heater  Baseboard  
 Electric Furnace  Other Wood Boiler

DID YOU KNOW THAT YOU CAN PAY YOUR BILL ONLINE OR ON OUR 24/7 PHONE LINE WITH NO FEES?

ONLINE ACCOUNT ACCESS:

EMAIL ADDRESS \_\_\_\_\_

PASSWORD \_\_\_\_\_  
6 TO 10 CHARACTERS, (LETTERS OR NUMBERS, NO SPACES)

BILL FORMAT:  HARD COPY  E-MAIL

27/4 PAY BY PHONE: \_\_\_\_\_

4 DIGIT PIN: \_\_\_\_\_

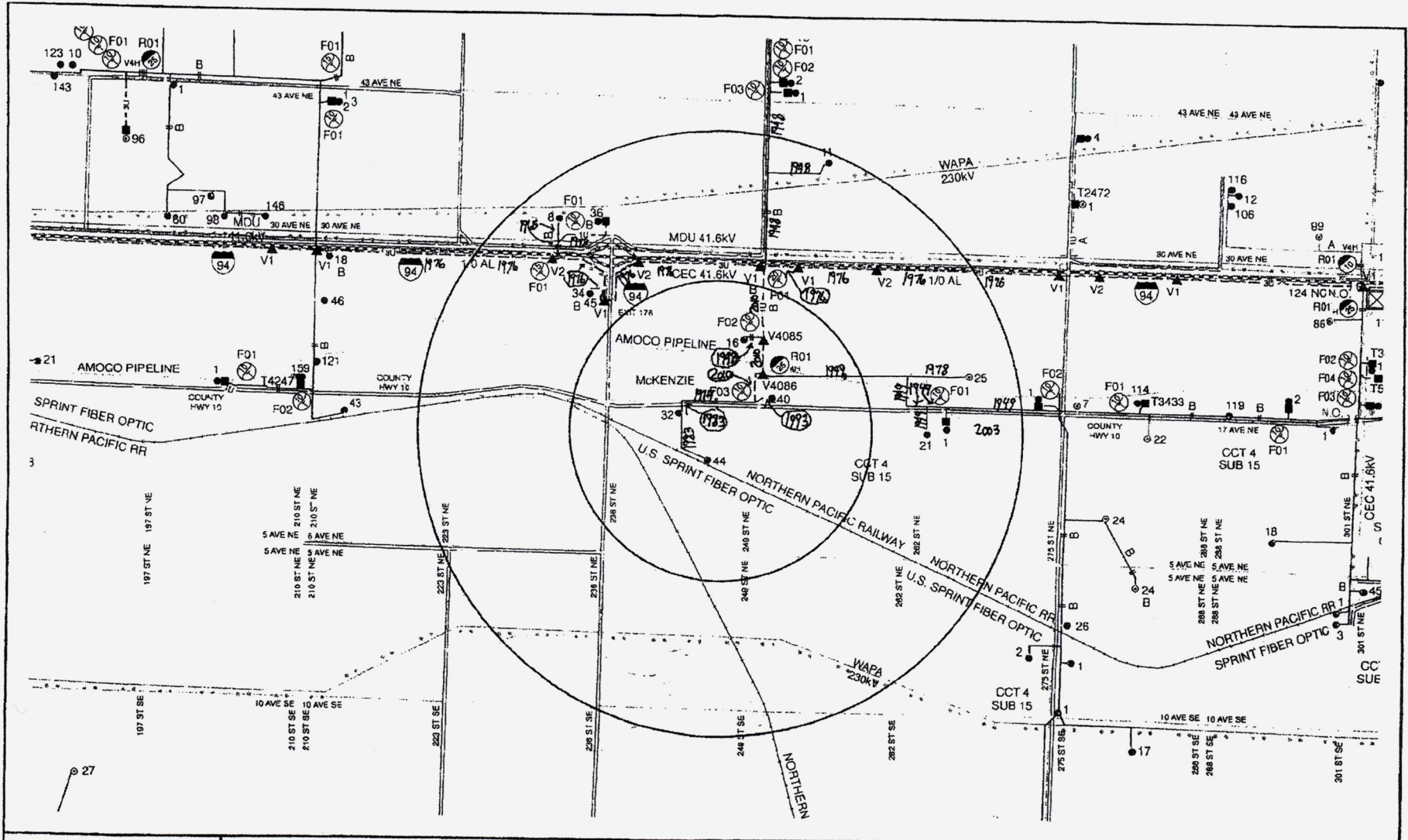
[Signature]  
COMPANY REPRESENTATIVE SIGNATURE

10/16/13  
DATE

OFFICE USE ONLY

ACCOUNT # \_\_\_\_\_

LOCATION # \_\_\_\_\_



39

32 PU-13-871 Filed: 5/15/2014 Pages: 1  
Exhibit B

FACILITIES IN THE VICINITY OF NEW MENARDS SITE  
PURPLE CIRCLE IS 1 MILE RADIUS, BLUE CIRCLE IS 2 MILE RADIUS

Scale: NTS
Filename: McKenzie Menards.pdf
Prepared By: JM
Plot Date: 1/15/2014

Capital Electric Cooperative Inc

1 MILE LINE EXTENSION PRICES

# 2

C

CR Exhibit 22 Hrg Exhibit C

<u>2 ELBOWS ON NORTH END OF I-94</u>	
Elbow price = \$21.97 X 2	43.94
Install Labor = \$56.75 X 2	<u>113.50</u>
Total	\$157.44
<u>NORTH ¼ MILE GROUND FOR 2Ø</u>	
Cable Grounding Kit = \$22.70 X 2	45.20
Ground Rods = \$11.95 X 2	23.90
Rod Clamps = \$2.49 X 2	4.98
#2 Copper = \$0.90 X 10'	9.00
Backhoe and Install Labor = \$379.35 X 1	<u>379.35</u>
Total	\$462.43
<u>SPLICE AND GROUND PIT BY EXISTING V4085 FOR 2Ø</u>	
Cable Grounding Kit = \$22.70 X 2	45.20
Ground Rods = \$11.95 X 2	23.90
Rod Clamps = \$2.49 X 2	4.98
#2 Copper = \$0.90 X 10'	9.00
Cable Splices = \$20.95 X 2	41.90
Backhoe and Install Labor \$492.85 X 1	<u>492.85</u>
Total	\$617.83
<u>SOUTH ¼ MILE GROUND FOR 2Ø</u>	
Cable Grounding Kit = \$22.70 X 2	45.20
Ground Rods = \$11.95 X 2	23.90
Rod Clamps = \$2.49 X 2	4.98
#2 Copper = \$0.90 X 10'	9.00
Backhoe and Install Labor = \$379.35 X 1	<u>379.35</u>
Total	\$462.43
<u>CUTOUT ON EXISTING 1Ø POLE FOR 3<sup>RD</sup> Ø</u>	
2" PVC = \$0.71 x 30'	21.30
Cutout = \$94.75 X 1	94.75
Arrestor = \$41.64 X 1	41.64
Fiberglass Bracket = \$42.50 X 1	42.50
Terminator = \$28.00 X 1	28.00
Terminator Clamp = \$12.95 X 1	<u>12.95</u>
Total	\$241.14
<u>3Ø CAN AT NE CORNER OF LOT</u>	
Enclosure = \$625.00 X 1	625.00
Sleeve = \$155.90 X 1	155.90
Ground Rods = \$11.95 X 2	23.90
Ground Rod Clamps = \$2.49 X 2	4.98
4 Point Modules = \$105.10 X 3	315.30
Elbows = \$21.97 X 3	65.91
Caps = \$18.18 X 9	163.62
#2 Copper = \$0.90 X 20'	18.00
Installation and Termination Labor = \$672.51 X 1	<u>672.51</u>
Total	\$2045.12
<u>CEC CREW FOR CUTOUT INSTALLATION AND ENERGIZING</u>	
	600.00
<u>1/0 PRIMARY URD – 5053' TOTAL FOOTAGE</u>	
Wire Cost 2Ø for 4753' X 2 X \$2.39 per ft	22,719.34
Wire Cost 3Ø for 200' X 3 X \$2.39 per ft	1,434.00
Cable Placement Charge 10,106' X \$0.43 per ft	4,345.58
Plowing Charge for 4753' X \$1.65 per ft	7,842.00
Boring Charge 300' X \$12.00 per ft	<u>3,600.00</u>
Total	\$39,940.92

GRAND TOTAL \$44,527.31

33 PU-13-871 Exhibit C Filed: 5/15/2014 Pages: 1

Capital Electric Cooperative Inc.

BUILDING SITE PRICES

CR Exhibit 23 Hrg Exhibit D

3 ELBOWS AT 3Ø CAN ON NORTHEAST CORNER OF LOT

Elbow Price = \$21.97 X 3	65.91
Install Labor = \$56.75 X 3	<u>170.25</u>
Total	\$236.16

TRANSFORMER AT BUILDING 925

Elbows = \$21.97 X 6	131.82
Bushing Inserts = \$21.86 X 6	131.16
Secondary Connectors = \$17.36 X 3	52.08
Ground Rods = \$11.95 X 2	23.90
Ground Clamps = \$2.49 X 2	4.98
#2 Copper = \$0.90 X 12'	10.80
Installation Labor = \$447.60	<u>447.60</u>
Total	\$802.34

3Ø CAN AT MIDDLE ENTRANCE TO LOT

Enclosure = \$625.00 X 1	625.00
Sleeve = \$155.90 X 1	155.90
Ground Rods = \$11.95 X 2	23.90
Ground Rod Clamps = \$2.49 X 2	4.98
4 Point Module = \$105.1 X 3	315.30
Elbows = \$21.97 X 9	197.73
Insulating Caps = \$18.18 X 3	54.54
#2 Copper = \$0.90 X 20'	18.00
Installation and Termination Labor = \$723.03 X 1	<u>723.03</u>
Total	\$2,118.38

TRANSFORMER AT BUILDING 919

Elbows = \$21.97 X 3	65.91
Bushing Inserts = \$21.86 X 6	131.16
Secondary Connectors = \$17.36 X 3	52.08
Ground Rods = \$11.95 X 2	23.90
Ground Rod Clamps = \$2.49 X 2	4.98
#2 Copper = \$0.90 X 12'	10.80
Insulating Caps = \$18.18 X 3	54.54
Installation Labor = \$277.35 X 1	<u>277.35</u>
Total	\$620.72

TRANSFORMER AT BUILDING 914

Same Costs as Building 925	Total	\$802.34
----------------------------	-------	----------

TRANSFORMER AB BUILDING 908

Same Costs as Building 925 & 914	Total	\$802.34
----------------------------------	-------	----------

TRANSFORMER AT BUILDING 917

Same Costs as Building 919	Total	\$620.72
----------------------------	-------	----------

CEC CREW FOR SETTING 5 TRANSFORMERS AND ENERGIZING

Total	\$2000.00
-------	-----------

1/0 3Ø PRIMARY URD

Wire Cost 3Ø for 5230' X 3 X \$2.39 per ft	\$37,499.10
Cable Placement Charge 15,690 X \$0.43 per ft	6,746.70
Trenching Charge for 4650' X \$2.95 per ft	<u>\$13,717.50</u>
Total	\$57,693.30

GRAND TOTAL \$65,696.30

**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 14<sup>th</sup> 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?

60 PU-13-871 Filed 09/17/2014 Pages: 13  
Findings of Fact, Concl. of Law & Order with Dissenting Opinion of Comm. Brian P. Kalk  
Public Service Commission

Filed - Clerk of District Court  
12/17/2014 4:18:36 PM  
Burleigh County, ND

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.<sup>1</sup> 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.

<sup>1</sup> 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.<sup>2</sup>

---

<sup>2</sup> *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:

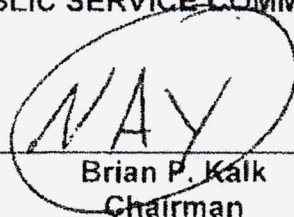
#### Order

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.

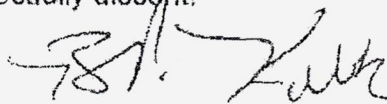
Another factor to be considered in determining whether wasteful duplication of investment or service occurs is whether construction of facilities to extend service to a customer by one supplier exceeds the cost to extend service to that same customer by a second supplier. Capital Electric can extend 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

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

IN DISTRICT COURT  
SOUTH CENTRAL JUDICIAL DISTRICT

Case No. 08-2014-CV-02349

Capital Electric Cooperative, Inc.,

Appellant,

vs.

North Dakota Public Service Commission  
and Montana-Dakota Utilities Co., a  
Division of MDU Resources Group, Inc.,

Appellees.

**MEMORANDUM AND  
ORDER AFFIRMING THE  
PUBLIC SERVICE  
COMMISSION'S FINDINGS  
OF FACT, CONCLUSIONS OF  
LAW AND ORDER**

**INTRODUCTION**

[¶1] This is an appeal by Capital Electric Cooperative, Inc. (Capital Electric) from the *Findings of Fact, Conclusions of Law and Order* of the North Dakota Public Service Commission (PSC) granting Montana-Dakota Utilities Co.'s, a Division of MDU Resources Group (Montana-Dakota) application to extend electric service to Menard, Inc. (Menard) in the NE ¼ of Section 33, Township 139N, Range 77W, Burleigh County, North Dakota (Menard Site).

**STANDARD OF REVIEW**

[¶2] An appeal from a PSC decision is governed by the Administrative Agencies Practice Act, N.D.C.C. ch. 28-32. *Coteau Properties Co. v. Oster*, 2000 ND 23, ¶ 5, 606 N.W.2d 876. This court exercises a limited review in appeals from administrative agency decisions. *Bergum v. North Dakota Workforce Safety & Ins.*, 2009 ND 52, ¶ 8, 764 N.W.2d 178. Under § 28-32-46, a district court shall affirm the order of an agency unless:

1. The order is not in accordance with the law.
2. The order is in violation of the constitutional rights of the appellant.
3. Provisions of this chapter have not been complied with in the proceedings before the agency.
4. The rules or procedure of the agency have not afforded the appellant a fair hearing.

5. The findings of fact made by the agency are not supported by a preponderance of the evidence.
6. The conclusions of law and order of the agency are not supported by its findings of fact.
7. The findings of fact made by the agency do not sufficiently address the evidence presented to the agency by the appellant.
8. The conclusions of law and order of the agency do not sufficiently explain the agency's rationale for not adopting any contrary recommendations by a hearing officer or an administrative law judge.

N.D.C.C. § 28-32-46.

[¶3] It is not a district court's function to act as a super board when reviewing decisions by an administrative agency and in technical matters involving agency expertise; the Commission's decision is entitled to appreciable deference. *Coteau*, 2000 ND at ¶ 5, 606 N.W.2d 876. This Court "do[es] not make independent findings of fact or substitute [its] judgment for that of the agency." *Vanlishout v. N.D. Dep't of Transp.*, 2011 ND 138, ¶ 12, 799 N.W.2d 397. This Court "determine[s] only whether a reasoning mind reasonably could have determined that the factual conclusions reached were proved by the weight of the evidence from the entire record. *Id.*

[¶4] "An agency's decisions on questions of law are fully reviewable." *Kiecher v. North Dakota Dep't of Transp.*, 2005 ND 23, ¶ 8, 691 N.W.2d 266. Restraint is exercised in reviewing an agency's findings of fact. *Bergum*, ¶ 8, 764 N.W.2d at 181. The Commission's decision will not be disturbed on appeal unless it is shown that the determination is not in accordance with the law, or the findings of fact, made by the agency are not supported by the evidence, or that the conclusions and decision of the agency are not supported by its findings of fact. *Cass County Elec. Coop. v. Otter Tail Power Co.*, 169 N.W.2d 415, 419 (N.D. 1969).

#### PROCEDURAL HISTORY

[¶5] On November 25, 2013, Montana-Dakota submitted an application to the PSC to extend electric service to the Menard Site. Capital Electric filed a protest on January 16, 2014 and requested a hearing. The PSC issued a notice of hearing on February 26, 2014 identifying the

topics to be considered at the hearing.

[¶6] On May 2, 2014 a public hearing was held at which both parties presented testimony and exhibits. The PSC considered ten issues at the hearing: (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 service would best serve orderly and economic development of electric service in the general area? (8) Would approval of 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 suppliers in the area unreasonably interfere with the service or system of the other? The PSC held three work sessions discussing these issues.

[¶7] On June 13, 2014, Montana-Dakota requested oral argument before the PSC. After the parties submitted briefs, oral argument was held on July 28, 2014. The PSC issued its *Findings of Fact, Conclusions of Law and Order* on September 17, 2014 and issued Montana-Dakota Certificate of Public Convenience and Necessity (CPCN) No. 5845. Capital Electric filed its *Notice of Appeal and Specifications of Error* on October 15, 2014. The parties submitted briefs on appeal and a hearing was held on May 11, 2015.

## **FACTS**

[¶8] Montana-Dakota and Capital Electric are the only electric suppliers operating near the Menard Site. Montana-Dakota is an investor owned electric utility providing electric service to customers in North Dakota under the regulatory jurisdiction of the PSC. Currently, Montana-Dakota serves twenty-eight customers within a mile radius of the Menard site, and twenty-nine customers within two-miles. The PSC found that Montana-Dakota has held a franchise to serve the community of McKenzie, which is immediately northeast and adjacent of the Menard Site, since 1928. The PSC also granted Montana-Dakota a CPCN to construct and operate an electric distribution system in McKenzie in 1928.

[¶9] Capital Electric is a rural electric cooperative providing electric service to its members in North Dakota. Currently, Capital Electric serves four customers within one mile of the Menard Site and eleven customers within two miles. The PSC found that Capital Electric provides electrical service to rural customers adjacent to the Menard Site.

[¶10] McKenzie, North Dakota is an unincorporated Township located northeast and adjacent to the Menard Site. The 1928 franchise granted to Montana-Dakota defined the boundaries of McKenzie as the Southeast  $\frac{1}{4}$  of Section 29 and the Southwest  $\frac{1}{4}$  of Section 28, Township 139N, Range 77W.

[¶11] In October 2013, Menard began looking for an electric provider to serve its planned manufacturing and distribution center at the Menard Site. The anticipated load at the site is approximately 1.2 MW with an estimated annual consumption of 7 million kWh. As a result, Menard requested estimated rates from Capital Electric and Montana-Dakota. Based on current electrical rates, the total annual estimated cost to Menard from Montana-Dakota was \$513,669.88 while Capital Electric estimated costs of \$575,883.84.

[¶12] Ultimately, Menard decided to request service from Montana-Dakota. This decision was based on cost-savings, future opportunity for cost savings, more reliable service, and rates and services that are subject to regulatory oversight and approval. The PSC determined that Menard preferred electrical service from Montana-Dakota.

[¶13] As a result of Menard's request for service, Montana-Dakota applied for a CPCN. Montana-Dakota owns and operates a 46 kV transmission line that originates in Bismarck and extends east along the north side of Interstate 94 (I-94) providing transmission service for a number of communities, including McKenzie. The transmission line is a two-way, or looped, supply source for Montana-Dakota's substation located north of McKenzie (McKenzie substation). The McKenzie substation supplies the distribution system serving McKenzie and the surrounding area. The transmission lines east and west of the McKenzie substation were rebuilt in 1975 and 1972, respectively.

[¶14] Montana-Dakota's distribution line for McKenzie is a Delta three-phase primary overhead line extending south from the McKenzie substation. The current distribution lines serving McKenzie were constructed in 1960, 1965, 1969, 1971, and 1979. The system extends outside of McKenzie as a single-phase line to serve customers south and west of McKenzie.

[¶15] Central Power Cooperative operates a transmission line located on the south side of I-94 that connects substations at Menoken and Sterling. Capital Electric would serve the Menard Site from the Menoken substation which is located approximately eight miles west of McKenzie. Capital Electric has an underground single-phase distribution line which runs south from I-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 I-94 was built in 1976; the underground single-phase line extending south from I-94 was built in 2010.

[¶16] The PSC determined both suppliers would need to construct upgrades and extensions to their existing systems to service to the Menard Site. Montana-Dakota proposed to: add neutral wire to convert approximately 5,700 feet of existing three-phase overhead line currently serving McKenzie from Delta to Wye configuration; convert approximately 1,200 feet of single-phase line to three-phase Wye and; extend that converted line underground for approximately 1,800 feet to the Menard Site. Montana-Dakota provided results of a study predicting the voltage drop between the McKenzie substation and the Menard Site would be less than 2.0 percent.

[¶17] The estimated cost for Montana-Dakota to upgrade the system and extend service to the Menard Site is \$192,671. Montana-Dakota's annual revenue requirement associated with the investment for the proposed extension is \$27,872. The PSC found that under Montana-Dakota's current rates the price to Menard for electrical service would be \$513,669.84. The PSC also found that Montana-Dakota would provide a net contribution of \$296,658 to common systems which would provide a benefit to other customers. Moreover, the PSC found that Montana-Dakota had only five system outages since January 2000.

[¶18] Capital Electric would need to convert approximately one-mile of single-phase line to three-phase line between its existing three-phase line and the Menard Site. The estimated cost for Capital Electric to extend service to the Menard Site is \$110,223. The PSC found that under Capital Electric's current rates the annual costs to Menard for electrical service would be \$575,883.84. Capital Electric did not provide any information or analysis of the amount of revenue Capital Electric would require for an adequate return on investment to serve the Menard Site. Capital Electric provided results of a study showing a voltage drop between the Menoken substation and the Menard Site of approximately 2.5 percent. Capital Electric states it could improve reliability of its three-phase line with an upgrade to a substation located in Sterling that,

currently, does not have the capacity to serve the entire load planned for the Menard Site. The costs of such an upgrade were not included with Capital Electric's proposed costs. The PSC found that Capital Electric experienced four outages on the system since 2009.

[¶19] After examining the ten factors, the PSC found that public convenience and necessity reasonably requires approval of Montana-Dakota's application because: the customer prefers service from Montana-Dakota; Montana-Dakota has operated in the area since 1928 and has more customers within one and two miles of the Menard Site; Montana Dakota provides less voltage drop and more reliability of service; Montana-Dakota's proposed extension is shorter; Montana-Dakota will serve the Menard Site more economically; and Montana-Dakota extension of service would best serve the community of McKenzie and realize significant cost savings to Menard, therefore best serving orderly and economic development of the area.

#### **LAW AND DECISION**

[¶20] Capital Electric makes several arguments on appeal. First, Capital Electric contends that Montana-Dakota does not have a franchise to serve the community of McKenzie. Second, that the PSC's determination that McKenzie is immediately northwest and adjacent to the Menard Site is not supported by the evidence. Next, the PSC misapplied the law in determining Montana-Dakota's extension of electrical services would best serve the orderly and economic development of the general area. Fourth, the PSC's finding that Montana-Dakota's proposed extension was shorter does not support the conclusions of law. Fifth, the PSC misapplied the law by making customer preference a key factor in the determination. Sixth, the PSC made additional errors of law and made findings that are not supported by the evidence. Finally, Capital Electric argues the PSC's decision contradicts the two primary purposes of the TIA.

[¶21] Under Chapter 49-03 of the North Dakota Century Code (TIA), “no public utility [can] extend its service lines outside the limits of a municipality which it was serving without a determination by the PSC that public convenience and necessity required such extension.” *Application of Otter Tail Power Co.*, 169 N.W.2d 415, 417 (N.D. 1969). The administrative power to determine public convenience and necessity has been vested by law in the PSC. *Id.* at 419.

[¶22] The factors to be taken into consideration in determining whether an application should be granted are: location of the lines of the suppliers; the reliability of the service which will be rendered by them, which of the supplies will be able to serve the area more economically and still earn an adequate return on investment; which supplier is best qualified to furnish electric service to the site designated; which supplier can best develop electric service in the area without wasteful duplication of investment or service. *Application of Montana-Dakota Utilities Co.*, 219 N.W.2d 174, 180 (N.D. 1974). When there is substantial evidence to support the decision of the agency, the decision must be affirmed. *Otter Tail*, 169 N.W.2d at 419.

***A. Montana-Dakota has a franchise to serve McKenzie***

[¶23] Capital Electric argues that McKenzie’s township board is incapable of granting Montana-Dakota a franchise. A franchise is defined as a “government conferred right or privilege to engage in a specific business.” Black’s Law Dictionary (10th Ed. 2014). More specifically, “a franchise is a contract.” *Capital Electric Co-op., Inc. v. City of Bismarck*, 2007 ND 128, ¶ 15, 736 N.W.2d 788.

[¶24] North Dakota Century Code § 58-03-01 states, “[e]ach township is a body corporate and has capacity: . . . [t]o make such contracts . . . as may be necessary for the exercise of its corporate or administrative powers.” N.D.C.C. § 58-03-01(3). Under N.D.C.C. § 58-06-01, the

board of township supervisors has the power “[t]o grant any person the right of way for the erection of telephone lines, electric light systems, water or wastewater systems, or gas or oil pipeline systems over, under, or upon public grounds, streets, alleys, or highways.” N.D.C.C. § 58-06-01(10). Therefore, a township through its board of supervisors is capable of granting a franchise.

***B. The PSC’s Determination that McKenzie is immediately Northwest and Adjacent to the Menard Site is supported by the evidence***

[¶25] Capital Electric argues that the PSC’s determination that McKenzie is immediately northwest and adjacent to the Menard Site is not supported by the evidence. Capital Electric contends that 1,800 feet separate the Menard Site and the community of McKenzie and that the only property directly adjacent to and immediately northwest of the Menard Site is farmland. Moreover, Capital Electric claims that platting the area does not make it part of McKenzie. Capital Electric contends that the PSC’s faulty finding on this issue caused error in all the other issues before the PSC.

[¶26] However, Capital Electric has overlooked one important factor. The franchise granted by McKenzie’s board defines McKenzie’s borders as the Southeast ¼ of Section 29 and the Southwest ¼ of Section 28, Township 139N, Range 77W. Moreover, it is undisputed that the Menard Site is located at Northeast ¼ of Section 33, Township 139N, Range 77W. Evidence presented to the PSC established that the Southwest ¼ of Section 28 is adjacent to the Northeast ¼ of Section 33.

[¶27] Capital Electric argues that because the area is undeveloped, it is not part of McKenzie. However, that does not negate the fact that Montana-Dakota has a valid franchise for the area immediately adjacent to the Menard Site and has since 1928. Because there is substantial

evidence to support the PSC's decision that McKenzie is immediately Northwest and adjacent to the Menard Site it must be affirmed. *See, Otter Tail*, 169 N.W.2d at 419.

***C. The PSC did not misapply the law by determining Montana-Dakota would best serve the orderly and economic development of the area***

[¶28] The PSC found that Montana-Dakota's 86 year history of serving the McKenzie area, the greater number of customers within both one and two miles of the Menard Site, the immediate adjacency of McKenzie to the Menard Site, a \$62,214 difference between costs to provide service, and the lower costs to the manufacturing and distribution center all favored Montana-Dakota. The PSC also found that the upgrades proposed by Montana-Dakota to serve the Menard Site would create significant ancillary benefits to the McKenzie area and any potential growth.

[¶29] Capital Electric contends that the PSC's use of customer rates to make a determination on a supplier's costs undermines the primary purposes of the TIA. Instead, arguing that because its upgrade costs are \$82,000 less than Montana-Dakota's, this factor weighs in favor of Capital Electric. However, Capital Electric overlooks several issues with its position. First, Capital Electric failed to provide a complete costs analysis to the PSC. At the hearing, Capital Electric indicated that in order to improve the reliability of service to the Menard Site, Central Power Cooperative would need to upgrade the Sterling substation.

[¶30] However, those upgrade costs were not included in the proposal. Capital Electric also failed to indicate what revenue it would require to receive and adequate return on its investment. Perhaps most importantly, Capital Electric's upgrades would provide a much lower ancillary benefit to the general area. Currently, Capital Electric serves only four customers within one mile and eleven customers within two miles of the Menard Site. Moreover, there was no indication from the record that these customers would be benefited in any way.

[¶31] Capital Electric also argues that the PSC's focus on the community of McKenzie was a misapplication of the law and the sole focus should have been on the Menard Site. However, this argument is contrary to the issue that must be addressed by the PSC which concerns the general area. There can be no debate that a community located immediately adjacent to the Menard Site is within the general area. The evidence presented to the PSC established that Montana-Dakota would be able to provide service the Menard Site at a lower cost and the resulting upgrades would also benefit McKenzie and, in light of the other factors, would better serve the orderly and economic growth of the general area. On the contrary, Capital Electric failed to provide the PSC with a complete cost analysis of the upgrades required to provide reliable service to the area and failed to establish how other customers in the general area would benefit as a result of its service to the Menard Site.

[¶32] Additionally, it is not a misapplication of the law for the PSC to consider the effects that lower consumer costs will have when determining which electric supplier will better serve the orderly and economic growth of the general area. This PSC has used this factor in previous determinations. *See*, PU-08-345; PU-08-346; PU-08-347; PU-08-693. Based on the evidence presented to the PSC, a reasoning mind reasonably could have determined that the factual conclusions reached were proved by the weight of the evidence from the entire record.

***D. The PSC's Finding that Montana-Dakota's proposed extension is shorter supports its Conclusions of Law***

[¶33] Capital Electric claims that because its single phase line surrounds the Menard Site and Montana-Dakota's three phase line is "completely and utterly useless as-is" the PSC erred in concluding that convenience and necessity reasonably required approval of Montana-Dakota's application. Capital Electric argues that Montana-Dakota's three phase line located 1,800 feet away is no better than Capital Electric's single phase line surrounding the site because both lines

need upgrades. In sum, Capital Electric contends that because it only needs to update 5,280 feet for a total cost of \$44,527.31 and Montana-Dakota would be required to make upgrades and extensions over 8,700 feet for a total cost of \$126,632.00 that its extension is shorter.

[¶34] However, Capital Electric concedes that Montana-Dakota's current three phase system is closer to the Menard Site. *See, Appellant Capital Electric Cooperative, Inc.'s Brief* (Capital Electric Brief), ¶ 68, 1/23/15; (Doc. Id #68). Based on the evidence presented to the PSC, Montana-Dakota would need to update its existing three phase line and extend it for 1,800 feet. On the contrary, Capital Electric would have to convert roughly a mile of single-phase line in order to service the site.

[¶35] This Court "do[es] not make independent findings of fact or substitute [its] judgment for that of the agency." *Vanlighthout*, 2011 ND at ¶ 12, 799 N.W.2d 397. This Court "determine[s] only whether a reasoning mind reasonably could have determined that the factual conclusions reached were proved by the weight of the evidence from the entire record. *Id.* Moreover, when there is substantial evidence to support the decision of the agency, the decision must be affirmed. *Otter Tail*, 169 N.W.2d at 419.

[¶36] In the present case, the PSC found that "[t]he proposed extension of Montana-Dakota's three-phase system to serve the [Menard] site is shorter than the proposed extension of Capital Electric's three-phase system. It is clear from this finding that the PSC was not concluding that the total length of proposed additions and upgrades was shorter, but solely that an extension of Montana-Dakota's currently existing three phase system would be shorter than an extension of Capital Electric's three phase system. Capital Electric concedes this as true. Moreover, the PSC indicates in its decision that both parties would be required to upgrade their existing systems. *Findings of Fact, Conclusions of Law and Order* (Order), ¶ 27, Sept. 17, 2014; (Doc. Id# 56). As

discussed above, the PSC also determined that Montana-Dakota's extension and upgrades would better serve the area and its numerous customers currently located there would also benefit. As a result, a reasoning mind could reasonably conclude that the factual conclusions were proved by the weight of the evidence.

***E. The PSC did not make customer preference a key factor in its determination***

[¶37] Capital Electric argues that because the PSC made six bullet point findings and three of those findings rely on Menard's preference for service from Montana-Dakota or on cost savings that would be received by Menard the PSC relied too heavily on customer preference. Capital Electric contends that the PSC's decision will result in rate-shopping by potential customers.

[¶38] Customer preference, while a factor to be considered, is not controlling. *Cass County Elec. Coop v. World Properties, Inc.*, 249 N.W.2d 514, 521 (N.D. 1976). North Dakota Supreme Court decisions indicate that "in rural areas . . . customer preference is a minor consideration." *Tri-County Elec. Co-op, Inc. v. Elkin*, 224 N.W.2d 785, 792 (N.D. 1974). "It cannot prevail where economic factors, such as relative costs and wasteful duplication, provide other criteria for choice." *Id.* "[C]ustomer preference does not govern the [PSC] in its decision but subjects the customer's preference for a regulated public utility service to an inquiry and decision by the [PSC] on the question of public convenience and necessity. *Id.*

[¶39] Here, the PSC found customer preference favored Montana-Dakota. However, Capital Electric argues the PSC erred when it considered the cost-savings Menard would recognize by receiving service from Montana-Dakota in its conclusions on other factors. Specifically, that Montana-Dakota would serve the location more economically and still receive an adequate return on investment and that Montana-Dakota would best serve the orderly and economic development of the general area by best serving McKenzie and providing significant cost savings to Menard.

[¶40] In the present case, the PSC did not give too much weight to customer preference. Instead, it determined that Montana-Dakota was Menard's preferred choice. It then examined each of the remaining factors and concluded that on balance those factors favored Montana-Dakota. Capital Electric now takes issue with the PSC's consideration of the cost savings that would be realized while examining these other factors.

[¶41] However, Capital Electric failed to provide the PSC with the amounts it would need to receive an adequate return on its investment and based on the information presented the PSC determined that Montana-Dakota would be able to provide a lower cost to the Menard site, even after a larger upfront investment. With respect to more economical service and an adequate return on investment, the PSC seemed to be more concerned with the benefits that would be received by not only Menard, but Montana-Dakota's other customers.

[¶42] Moreover, with respect to the orderly and economic development of the general area, the PSC indicated that a primary consideration of that factor is whether a suppliers cost to provide service exceeds the cost of another supplier to provide service to the same customer. *See, Order* at ¶ 25; (Doc. Id# 56). Additionally, the PSC's decision was not based solely on the cost savings, the PSC also considered that Montana-Dakota has held a valid franchise and CPCN since 1928, that the upgrades required to serve the Menard Site would also upgrade the system serving McKenzie, and that Menard would realize a significant cost savings. In technical matters involving agency expertise; the Commission's decision is entitled to appreciable deference. *See, Coteau*, 2000 ND at ¶ 5, 606 N.W.2d 876.

[¶43] Interestingly, it appears that customer preference "cannot prevail where economic factors, such as relative costs and wasteful duplication, provide other criteria for choice." *See, Tri-County*, 224 N.W.2d at 792. This suggests that customer preference cannot be used as a

factor to outweigh other factors. However, in the present case, the PSC determined that six of the ten factors reviewed, including economic factors, favored Montana-Dakota. The PSC did not base its additional findings, where it considered cost savings, solely on the cost savings to Menard. Based on these findings, the PSC did not give too much weight to customer preference.

***F. The PSC's decision did not misapply the law and is supported by the weight of the evidence***

[¶44] Capital Electric argues the PSC erred when it concluded that Montana-Dakota can serve the Menard Site more economically and still earn an adequate return on investment because its costs to extend service are 65% less than Montana-Dakota's. Capital Electric also claims the PSC erred when it concluded that either extension would not interfere with the other supplier's system or service because it will result in the area being checker boarded by Montana-Dakota and Capital Electric.

[¶45] Capital Electric asks this Court to conclude that the only consideration for this factor can be the cost to extend service. However, the PSC considered the benefits that would be received by other customers and consideration of "not only the revenue requirement associated with incremental investment to extend service, but also the other costs of electric distribution, transmission and generation as reflected in the service provider's rates. *See, Order* at ¶¶ 20-22; (Doc. Id# 56). The PSC also considered the net contribution that would be received and provide a benefit to Montana-Dakota's other customers. As discussed above, Capital Electric failed to provide the PSC with the amounts it would need to receive an adequate return on its investment. In technical matters involving agency expertise; the Commission's decision is entitled to appreciable deference. *See, Coteau*, 2000 ND at ¶ 5, 606 N.W.2d 876. As a result, the PSC's finding on this factor did not misapply the law and is supported by the weight of the evidence.

[¶46] Next, the PSC found that both Capital Electric and Montana-Dakota currently cross or would cross each other's lines in the area. The PSC found that Montana-Dakota's proposed line would cross Capital Electric's single-phase line west of the Menard Site, which is not capable of and is not proposed for use to serve the Menard Site. The PSC also found that Capital Electric's three-phase line that feeds its single-phase line already crosses Montana-Dakota's three phase line serving McKenzie. Capital Electric contends that allowing Montana-Dakota to cross Capital Electric lines that surround the Menard Site results in the territory being checker boarded and economically interferes with Capital Electric's system because it spent money extending its system.

[¶47] However, neither Capital Electric nor Montana-Dakota provided any evidence that the extension of service would unreasonably interfere with the service or system of the other. As a result, the PSC found:

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. . . . The [TIA] 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 [CPCN] before it extends facilities in a rural area.

*Order*, at ¶ 33; (Doc. Id# 56). Based on the lack of evidence presented to the PSC, "a reasoning mind reasonably could have determined that the factual conclusions reached were proved by the weight of the evidence from the entire record. *Vanlighthout*, 2011 ND at ¶ 12, 799 N.W.2d 397.

***G. The PSC's decision does not contradict the purposes of the TIA.***

[¶48] Capital Electric contends that the PSC's determination endorses wasteful duplication and encourages future conflict. The primary purpose of the TIA is to keep to a minimum wasteful duplication of capital-intensive utility services and conflicts between suppliers of electricity. *Cass Co. Elec. Co-op v. Northern States Power Co.*, 419 N.W.2d 181, 184-85 (N.D. 1988).

[¶49] Capital Electric argues that the PSC's decision sanctions Montana-Dakota's duplication of their already existing electric facilities, which, Capital Electric claims are capable of handling the load required for the Menard Site. However, the North Dakota Supreme Court has held that while the purposes of the TIA is to minimize wasteful duplication and conflicts between service providers:

[T]he Act's implementing statutes do not necessarily guarantee the accomplishment of that purpose. Under our statutory scheme, electric public utilities must, with few exceptions, secure a [CPCN] from the PSC in order to extend their electric distribution facilities. On the other hand, electric cooperatives are largely unregulated in the sense that they have the ability to expand their electrical services without having to first obtain a [CPCN]. Thus, in light of the current regulatory situation, it may not always be possible to prevent some of the actual duplication of distribution facilities which may occur in practice when cooperatives extend their existing electrical systems.

*Northern States Power Co. v. North Dakota Public Service Com'n*, 452 N.W.2d 340, 344 (N.D. 1990)(internal citations omitted). Moreover, the North Dakota Supreme Court has held that which electric supplier's facilities are actually duplicative or wasteful is one of fact for the PSC to determine. *Id.* at 345.

[¶50] Here, the PSC determined that no wasteful duplication would occur from approval of the application. The PSC considered whether the lines would be crossed and the impact on the electric service within McKenzie. It concluded that both providers' lines would cross, or in Capital Electric's case had already crossed, the other's lines. Additionally, the PSC concluded Montana-Dakota's upgrades would provide a benefit to the community of McKenzie in addition to serving the Menard Site and any potential growth.

[¶51] Capital Electric argues the PSC should have examined whether the extension required one supplier to cross the other's lines and not whether crossing had occurred in the past. Additionally, Capital Electric contends the PSC should have addressed whether one provider's

costs to extend exceeded the other's cost in determining whether the application would result in wasteful duplication.

[¶52] Here, the PSC determined that based on the crossing of lines and the benefit to McKenzie, wasteful duplication would not occur. Additionally, the PSC did determine the costs required to extend service. The PSC found that Capital Electric's costs to extend service were approximately \$82,000 less than Montana-Dakota. *See, Order*, at ¶¶ 18-19; (Doc. Id# 56). However, the PSC determined that the upgrades provided by Montana-Dakota would improve electric service within McKenzie and would help meet any potential growth.

[¶53] It is not this Court's function to act as a super board when reviewing decisions by an administrative agency and in technical matters involving agency expertise; the Commission's decision is entitled to appreciable deference. *Coteau*, 2000 ND at ¶ 5, 606 N.W.2d 876. Here, the PSC's determination of wasteful duplication is entitled to appreciable deference. As a result, the PSC's determination will not be reversed.

[¶54] Additionally, the primary purpose of the TIA is to *keep to a minimum* wasteful duplication of capital-intensive utility services. *Cass Co. Elec. Co-op v. Northern States Power Co.*, 419 N.W.2d 181, 184-85 (N.D. 1988)(emphasis added). The TIA is not intended to prevent all wasteful duplication, only to minimize it. Therefore, even assuming that the PSC erred in its wasteful duplication determination, the primary purpose of the TIA, to minimize wasteful duplication, is still served by granting the application.

[¶55] The North Dakota Supreme Court has indicated that while preventing wasteful duplication is a goal of the TIA it may not always be possible to prevent some of the actual duplication of distribution facilities. *See, Northern States Power Co. v. North Dakota Public Service Com'n*, 452 N.W.2d 340, 344 (N.D. 1990). Even assuming the PSC erred and this factor

should have favored Capital Electric, five of the ten factors would still weigh in favor of Montana-Dakota, one factor, wasteful duplication, would favor Capital Electric, and four would favor neither party. Based on these factors, the PSC would have still determined that public convenience and necessity favored the granting of a CPCN to Montana Dakota. This is especially true considering that it is not required to prevent wasteful duplication in all instances. *See, Cass Co. Elec. Co-op v. Northern States Power Co.*, 419 N.W.2d 181, 184-85 (N.D. 1988). As a result, the PSC's determination has fulfilled the primary purpose of the TIA to minimize wasteful duplication.

[¶56] Finally, Capital Electric argues that the PSC's decision encourages future conflict. Capital Electric argues that this determination sets a precedent that allows public utilities to seek large loads in rural areas and encourages future conflicts. The Court finds this argument is unavailing. The TIA sets out the requirements for a public utility to extend its service lines outside a municipality. *See*, N.D.C.C. Ch. 49-03. In order to do so a public utility must apply for and receive a CPCN, which can only be done after the PSC makes a finding of public convenience and necessity. This process has been in place since the TIA was adopted and the PSC's ruling in this case cannot change those requirements. As a result, the PSC's decision adequately minimizes wasteful duplication, will not encourage future conflict, and is not contrary to the primary purposes of the TIA.

**CONCLUSION**

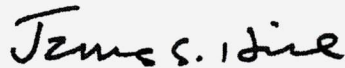
[¶57] This Court concludes that Capital Electric has failed to show that the PSC's determination is not in accordance with the law, that the findings of fact made by the PSC are not supported by the evidence, or that its conclusions and decision are not supported by its findings of fact. *Cass County Elec. Coop. v. Otter Tail Power Co.*, 169 N.W.2d 415, 419 (N.D. 1969). While it does appear that the PSC was concerned with the benefits provided to the general area when it approved the application such concerns do not warrant reversal.

[¶58] The decision of the PSC is in all respects **AFFIRMED**.

[¶59] IT IS SO ORDERED

Dated this 3<sup>rd</sup> day of June, 2015.

BY THE COURT:



---

James S. Hill, District Judge  
South Central Judicial District

cc:

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

IN DISTRICT COURT  
SOUTH CENTRAL JUDICIAL DISTRICT

Capital Electric Cooperative, Inc.,

Court File No. 08-2014-CV-02349

Appellant,

v.

North Dakota Public Service Commission  
and Montana-Dakota Utilities Co., a  
Division of MDU Resources Group, Inc.,

**JUDGMENT**

Appellees.

[¶1] Pursuant to the June 3, 2015 Memorandum and Order Affirming the Public Service Commission's Findings of Fact, Conclusions of Law and Order, the Honorable James S. Hill, presiding, now therefore,

[¶2] **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the Public Service Commission's Findings of Fact, Conclusions of Law, and Order dated September 17, 2014 is AFFIRMED.

[¶3] WITNESS THE HONORABLE JAMES S. HILL, JUDGE OF THE DISTRICT COURT OF THE SOUTH CENTRAL JUDICIAL DISTRICT, WITHIN AND FOR BURLEIGH COUNTY, NORTH DAKOTA, AND MY HAND AND SEAL OF THIS COURT AT BISMARCK, NORTH DAKOTA, THIS 19<sup>th</sup> DAY OF AUGUST, 2015.

Dated the 19<sup>th</sup> day of August, 2015.

Michelle Riving  
Clerk of the District Court

Capital Electric Cooperative, Inc.,

Court File No. 08-2014-CV-02349

Appellant,

v.

North Dakota Public Service Commission and  
Montana-Dakota Utilities Co., a Division of  
MDU Resources Group, Inc.,

**NOTICE OF APPEAL**

Appellees.

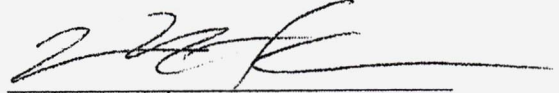
---

[¶1] NOTICE IS HEREBY GIVEN that Capital Electric Cooperative, Inc. (herein “Capital Electric”), the above-named Appellant, hereby appeals to the North Dakota Supreme Court from the District Court’s “MEMORANDUM AND ORDER AFFIRMING THE PUBLIC SERVICE COMMISSION’S FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER” (herein “June 3, 2015 Order”) issued on June 3, 2015 and filed June 5, 2015.

[¶2] On September 17, 2014, the Public Service Commission (herein “Commission”) issued its Findings of Fact, Conclusions of Law and Order and issued Montana-Dakota Utilities a Certificate of Public Convenience and Necessity No. 5845. Pursuant to the Administrative Practices Act, Capital Electric Cooperative, Inc. appealed to Burleigh County District Court. The District Court, in its June 3, 2015 Order, affirmed the Commission’s decision. Capital Electric appeals from the June 3, 2015 Order and states as its preliminary statement of issues as follows: (1) the Commission’s Order is not in accordance with the law; (2) the Commission’s Findings of Fact are not supported by a preponderance of the evidence; (3) the Commission’s Conclusions of Law and Order are not supported by its finding of facts; and (4) the Findings of Fact made by the Commission do not sufficiently address the evidence presented to the Commission by Capital Electric.

Dated this 3rd day of August, 2015.

PRINGLE & HERIGSTAD, PC



---

Carol K. Larson #4406  
Matthew H. Olson, ID# 06182  
Attorneys for Appellant  
2525 Elk Drive, PO Box 1000  
Minot ND 58702-1000  
(701) 852-0381  
cklarson@srt.com  
molson@pringlend.com

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

**Capital Electric Cooperative, Inc. vs  
Montana-Dakota Utilities Co.  
Complaint**

**Case No. PU-05-551**

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

**June 22, 2006**

**Appearances**

Commissioners Tony Clark, Susan E. Wefald, and Kevin Cramer

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

Carol K. Larson, Pringle & Herigstad, P.O. Box 1000, Minot, North Dakota 58702, appearing on behalf of Capital Electric Cooperative, Bismarck, North Dakota.

William W. Binek, Chief Counsel, North Dakota Public Service Commission, State Capitol, Bismarck, North Dakota 58505, appearing on behalf of the Public Service Commission.

Al Wahl, Office of Administrative Hearings, 1707 North 9th Street, Bismarck, North Dakota 58501-1882, appearing as Hearing Examiner.

**Preliminary Statement**

On September 29, 2005, Capital Electric Cooperative, Inc. (Capital) filed a Complaint alleging that Montana-Dakota Utilities Co. (Montana-Dakota) (1) intends to provide electric service to a development in Complainant's service area and (2) such service will unreasonably interfere or is about to unreasonably interfere with the service or system of Capital Electric.

On October 18, 2005, the Commission issued a Notice of Hearing scheduling the hearing for December 13, 2005.

On October 20, 2005, Montana-Dakota filed an Answer and Counterclaim. Montana-Dakota admitted that it intended to provide electric distribution services in that part of Boulder Ridge that has been annexed to the City of Bismarck. Montana-Dakota denied its service would interfere with service or facilities of Capital. Montana-Dakota

also asserted that the Complaint should be dismissed on the basis that the Commission does not have jurisdiction to restrain or enjoin Montana-Dakota from exercising its franchised authority to provide electric distribution services in the City of Bismarck, including Boulder Ridge.

On November 10, 2005, Capital filed its reply to Montana-Dakota's Counterclaim requesting the Counterclaim be dismissed.

On November 23, 2005, Montana-Dakota filed a Motion to Dismiss the Complaint again asserting that the Commission does not have jurisdiction and asserting that Capital is not authorized to provide service within Boulder Ridge and therefore cannot, as a matter of law, interfere with the services of Capital.

On November 30, 2005, the December 13 hearing was continued.

On December 30, 2005, the Commission issued a Notice of Reschedule Hearing for February 9, 2006.

On February 9, 2006, the Commission held a public hearing to consider the issues identified in its Notice of Rescheduled Hearing. The issues identified for hearing were:

1. Whether the Public Service Commission has jurisdiction to award the relief requested by the Complainant.
2. Whether Respondent should be restrained and enjoined from constructing or extending its lines, plant, or system into Complainant's franchised service area.
3. Whether Respondent should remove all of its facilities in the Complainant's service area.

At the hearing Montana-Dakota renewed its Motion to Dismiss and moved to voluntarily dismiss its Counterclaim in view of the proceeding in South Central District Court. The hearing officer granted Montana-Dakota's motion to voluntarily dismiss its Counterclaim.

At the hearing, Capital presented evidence consisting of testimony and exhibits. Montana-Dakota cross-examined Capital's witness. Montana-Dakota presented no direct testimony.

At the close of the hearing, the Commission set a briefing schedule. Then on February 10, 2006, the Commission held a public working session for the purpose of discussing the best course of action for the Commission. The Commission held the working session the day after the hearing so the parties would be apprised of the Commission's considerations regarding the matter. The Commission took into consideration the pending action before the District Court regarding the franchise issues. The Commission determined at the working session that the most appropriate

action would be to continue the complaint proceeding for an indefinite period of time until the issue of city franchise rights is finally determined.

An Order for Continuance was prepared and was put on the regular agenda for the February 22, 2006 Commission meeting. The agenda item was held over to consider a minor change in language. The Order for Continuance was put on the regular agenda for the March 7, 2006 Commission meeting. The agenda item was withdrawn following receipt of the Motion and Brief for Hearing on "Continuance" filed by Capital Electric on March 6, 2006.

On March 7, 2006, the Commission suspended the briefing schedule in this proceeding.

On March 13, 2006, the Commission issued a Notice of Hearing scheduling a public hearing on March 23, 2006, to hear oral arguments on the issue of whether the Commission has authority to issue an order continuing the proceeding for an indefinite period of time until the issue of the city franchise rights is finally determined.

On March 16, 2006, Commission staff filed a Brief in Support of Continuance.

On March 20, 2006, Capital filed Proposed Findings of Fact, Conclusions of Law and Order and Brief on Complaint against MDU.

On March 21, 2006, Capital Electric filed a Supplemental Brief on the Commission's Motion for Continuance.

The hearing was held on March 23 as scheduled.

On April 27, 2006, Montana-Dakota filed Proposed Findings of Fact, Conclusions of Law and Order and Brief in Support of Motion to Dismiss.

Having heard and considered this matter, the Commission makes its:

### **Findings of Fact**

1. Capital is an electric cooperative organized under North Dakota Century Code Chapter 10-13 providing electric service to its members in North Dakota.
2. Montana-Dakota is an investor owned electric utility providing electric service to customers in North Dakota under the regulatory jurisdiction of the Commission under Title 49 of the North Dakota Century Code.
3. Boulder Ridge is a subdivision in northwest Bismarck in Section 16 of Township 139 North, Range 80 West, Haycreek Township in Burleigh County. The

entire area of Boulder Ridge is 92.27 acres, subdivided into more than 170 lots. Boulder Ridge is bound on the west by North Washington Street and on the south by 43<sup>rd</sup> Avenue.

4. In April of 2005, Part of Boulder Ridge 1<sup>st</sup> Addition was annexed to the City of Bismarck. Both Capital and Montana-Dakota asserted a right to serve Boulder Ridge with electric distribution service.

5. By resolution dated May 12, 1987, the Board of City Commissioners of the City of Bismarck issued Montana-Dakota a general limited franchise to construct and maintain an electric transmission and distribution system within the City of Bismarck for a period of 20 years.

6. By resolution dated May 25, 1993, the Board of City Commissioners of the City of Bismarck issued a franchise to Capital to construct and maintain an electric transmission and distribution system within a limited geographic area of the City of Bismarck. The franchise provides the authority granted to Capital is limited geographically to avoid duplication of facilities between Capital and other electric franchises. The geographic limits to the franchise are those that were described in an Area Service Agreement dated July 5, 1973 between Capital and Montana-Dakota as modified by an amendment dated October 25, 1990 and any future amendments.

7. By letter dated June 26, 2002, Montana-Dakota cancelled the Area Service Agreement with Capital. By terms of the Area Service Agreement, the cancellation became effective June 26, 2003.

8. The Complaint before the Commission was preceded by Montana-Dakota's filing with the Bismarck Board of City Commissioners a Petition to Declare Franchise Rights of Montana-Dakota and Capital Electric to provide electric service to Part of Boulder Ridge First Addition to the City of Bismarck. On November 14, 2005, the Board of City Commissioners issued its Findings, Conclusions, Decision and Order that electric power service to Part of Boulder Ridge Subdivision is properly served by Montana-Dakota, subject to Capital Electric retaining any existing customers.

9. Capital Electric initiated a Declaratory Judgment proceeding by filing a Complaint dated December 1, 2005 in the District Court, South Central Judicial District, Burleigh County, North Dakota, naming Montana-Dakota, the City of Bismarck, and the Public Service Commission as Defendants seeking a judgment declaring Capital Electric's rights under its franchise to operate an electric distribution system in Bismarck.

10. On January 30, 2006, the District Court issued its Memorandum Opinion and Order on the City of Bismarck's Motion to Dismiss or in the Alternative for a More Definite Statement and on Montana-Dakota's Motion to Dismiss. The Court stated its opinion that the question of whether Montana-Dakota is operating lawfully under its franchise is one of franchise interpretation by the City Commissioners, and that only

after the City Commissioners have decided the issue, and after resulting appeal, may the Public Service Commission determine whether Montana-Dakota is unreasonably interfering with Capital Electric's operations. The Court acknowledged that the Public Service Commission may have a different opinion concerning the matter.

11. On March 2, 2006 a hearing on the appeal of the decision issued by the City of Bismarck regarding the franchise rights for electric service to the area was held. The Order on Appeal was issued by the District Court on March 14, 2006, denying Capital Electric's appeal.

12. A second Order was issued by the District Court on May 30, 2006 granting Montana-Dakota's Motion for Dismissal of Amended Complaint.

13. Before Boulder Ridge was platted and annexed to the City of Bismarck, Capital was the only provider of electric service in the part of Haycreek Township now named Boulder Ridge. Capital provided electric service to a location in Section 16 since 1949. In 2005 that service extension was removed in preparation for the development of Boulder Ridge. Capital had other services in Section 16, since the mid-1990s, still in place in 2005. Capital had three-phase lines along the west and south sides of Section 16 since 1973, still in place in 2005.

14. At the time Boulder Ridge was annexed, Capital's service in the subdivision was limited to two street lights and a CATV booster located in the road right-of-way along 43<sup>rd</sup> Avenue. Previous service to a pasture well by Capital within Boulder Ridge was abandoned prior to the annexation of Boulder Ridge.

15. Both Montana-Dakota and Capital extended distribution facilities to serve customer locations within Boulder Ridge. Montana-Dakota constructed its distribution facilities by extending a three-phase feeder line approximately 2,000 feet from a location in French's Addition south of 43<sup>rd</sup> Avenue and east of Washington Street. Capital extended distribution facilities from its three-phase feeder lines location along Washington Street and 43<sup>rd</sup> Avenue. Montana-Dakota's extension of its underground feeder line crossed Capital's overhead feeder line along 43<sup>rd</sup> Avenue. Montana-Dakota was in the process of installing its facilities at the time Capital began installing its facilities.

16. Capital has a three-phase framework around the area of Capital's northwest Bismarck service area, served from 4 different substations. Capital's facilities nearest to Boulder Ridge are three-phase facilities immediately contiguous to Boulder Ridge along the west side of Section 16 (east of Washington Street) and along the south side of Section 16 (North of 43<sup>rd</sup> Avenue) of Haycreek Township. Capital's three-phase facilities were in place before Boulder Ridge was platted and before part of Boulder Ridge was annexed to the City of Bismarck. The facilities were also in place before Montana-Dakota extended its facilities to provide electric distribution services in Boulder Ridge.

17. Capital's feeder lines located along 43<sup>rd</sup> Avenue and Washington Street were built prior to 1973 to tie together Capital's substations at other locations. The use of these feeder facilities has not changed in the last 20 years. Prior to 1973, Capital did not have a franchise with the City of Bismarck or an Area Service Agreement with Montana-Dakota.

18. Capital has substantial facilities within the corporate limits of Bismarck and within a two-mile radius of Boulder Ridge and in the area designated as "The principal service area of the Cooperative [Capital]" under the 1973 Area Service Agreement.

19. Capital is the only provider of electric service in areas outside the corporate limits of Bismarck within a two mile radius of Boulder Ridge.

20. Capital included "The principal service area of the Cooperative [Capital]" under the 1973 Area Service Agreement in its long range plans and has made substantial investments to serve it. Capital has invested in excess of 7 million dollars in the area northwest of Bismarck, west of Highway 83, including Boulder Ridge. These facilities were planned and constructed to provide an electric system for new developments, such as Boulder Ridge.

21. Capital's framework is a reliable system of substations and distribution lines that can be operated in a looped fashion. In the event of an outage, Capital can provide looped service to Boulder Ridge. Capital's three-phase framework in the area northwest of Bismarck, west of Highway 83, is supplied from four different substations, the closest of which is within one mile of Boulder Ridge. Capital's system includes a 5th delivery substation under construction.

22. Montana-Dakota's facilities nearest to Boulder Ridge are in the southerly part of French's 1st Addition, approximately ½ mile from the southerly boundary of Boulder Ridge. It is off these facilities that Montana-Dakota extended its facilities to Boulder Ridge. Montana-Dakota has no other facilities closer to Boulder Ridge. Montana-Dakota's facilities in Boulder Ridge cannot be operated in a looped fashion in the event of an outage.

23. Montana-Dakota's extension of facilities into Boulder Ridge crossed Capital's facilities in two places, in French's 1<sup>st</sup> Addition and on the north side of 43<sup>rd</sup> Avenue in Boulder Ridge and Montana-Dakota's extension of its facilities ran parallel to Capital's facilities in two places, in French's 1<sup>st</sup> Addition and on the north side of 43<sup>rd</sup> Avenue in Boulder Ridge.

24. Boulder Ridge is entirely surrounded by areas served by Capital.

25. The Commission finds Montana-Dakota's extension of its facilities crossing and running parallel to Capital's facilities in the northerly part of original French's 1<sup>st</sup> Addition, crossing 43<sup>rd</sup> Avenue into Boulder Ridge, and crossing and running parallel to Capital's facilities on the north side of 43<sup>rd</sup> Avenue, interferes with

and constitutes an unreasonable duplication of investment and available facilities and services in Boulder Ridge provided by Capital.

26. The Commission finds that service by Capital would best promote and serve orderly and economic development of electric service in the Boulder Ridge subdivision. Capital is able to extend service to Boulder Ridge through a shorter extension at a lower cost. Service by Capital to Boulder Ridge will not result in checker boarding of customers served by Montana-Dakota and Capital.

27. The Commission finds Montana-Dakota's extension of its facility to Boulder Ridge, an area not contiguous to Montana-Dakota's existing service areas, would create a checkerboard of service areas.

28. The Commission finds Capital is best able to serve Boulder Ridge economically due to the nature and extent of its investment in plant, facilities, framework, and system.

29. The Commission finds Montana-Dakota's extension of its electric distribution lines into Boulder Ridge 1<sup>st</sup> Addition interferes with and constitutes an unreasonable duplication of investment and services provided by Capital.

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. The Commission has jurisdiction under North Dakota Century Code Section 49-03-01.4 to hear and determine the Complaint of Capital alleging Montana-Dakota's extension of its electric distribution lines to Boulder Ridge is a violation of North Dakota Century Code Section 49-03-01.3. Section 49-03-01.3 states:

**49-03-01.3. Exclusions from limitations on electric distribution lines, extension, and service and on issuance of certificates of public convenience and necessity.** Sections 49-03-01 through 49-03-01.5 shall not be construed to require any such electric public utility to secure such order or certificate for an extension of its electric distribution lines within the corporate limits of any municipality within which it has lawfully commenced operations; provided, however, that such extension or extensions shall not interfere with existing services provided by a rural electric cooperative or another electric public utility within such municipality; and provided duplication of services is not deemed unreasonable by the commission.

Sections 49-03-01 through 49-03-01.5 shall not be construed to require an electric public utility to discontinue service to customers thereof

whose places receiving service are located outside the corporate limits of a municipality on July 1, 1965; provided, however, that within ninety days after July 1, 1965, any electric public utility furnishing service to customers whose places receiving service are located outside the corporate limits of a municipality shall file with the commission a complete map or maps of its electric distribution system showing all places in North Dakota which are located outside the corporate limits of a municipality and which are receiving its service as of July 1, 1965. After ninety days from July 1, 1965, unless a customer whose place being served is located outside the corporate limits of a municipality is shown on said map or maps, it shall be conclusively presumed that such customer was not being served on July 1, 1965, and cannot be served until after compliance with the provisions of section 49-03-01.1.

2. The City of Bismarck has the power to regulate the franchises of any public utility within the City of Bismarck under Article VII, Section 11 of the North Dakota Constitution. Article VII, Section 11 states: "The power of the governing body of a city to franchise the construction and operation of any public utility or similar service within the city shall not be abridged by the legislative assembly." Under Article 3, Section 10 of the Home Rule Charter for the City of Bismarck, the Bismarck City Commission is the franchising authority for both Capital and Montana-Dakota for all public areas within the City of Bismarck and the City Commission has the authority to decide questions regarding the franchises issued by it.

3. Section 10-11-01 of the Bismarck City Ordinances prohibits the placement or maintenance of an electric distribution system in, over, upon or under any street or public place within the City of Bismarck without a franchise granted by resolution of the Bismarck Board of City Commissioners.

4. The Commission's jurisdiction is limited to matters delegated to it by the North Dakota Legislature under North Dakota Century Code Title 49. The Commission does not have jurisdiction regarding the franchise under Article VII, Section 11 of the North Dakota Constitution.

5. Under the general provisions of North Dakota Century Code Section 49-03-01 and 49-03-01.3, an electric public utility must obtain from the Commission a certificate of public convenience and necessity authorizing construction or operation of a public utility plant or system, but a new certificate is not required for each and every extension of its electric distribution lines within the corporate limits of a municipality within which it has lawfully commenced operations.

6. The question of which electric suppliers' facilities are actually duplicative or wasteful is one of fact for the Commission to determine. In making the determination, the Commission considers which supplier is better able to serve the area due to the nature and extent of existing facilities in the area, whether the electric public utility's extension into the area would constitute an unreasonable duplication of capital intensive

facilities and services already provided by the rural electric cooperative and which would best promote orderly and economic development of electric service. The Commission must look at the existing electric facilities that Capital and Montana-Dakota have in place and determine whether extension of Montana-Dakota's services to Boulder Ridge would constitute an unreasonable duplication of capital intensive services already provided by Capital.

7. Montana-Dakota's extension of its electric distribution lines into Boulder Ridge, through French's 1<sup>st</sup> Addition, and across 43<sup>rd</sup> Avenue and across Capital's facilities interferes with and constitutes an unreasonable duplication of investment and available services provided by Capital, under North Dakota Century Code Section 49-03-01.3. There is no evidence in the record upon which to base an ultimate decision that Montana-Dakota can serve the Boulder Ridge area without wasteful duplication of investment or service.

8. Under North Dakota Century Code Chapter 49-03, Montana-Dakota should cease and desist from providing electric services to Boulder Ridge Addition.

9. Under North Dakota Century Code Section 49-03-01.4, the Commission may prescribe reasonable terms and conditions in addition to the restraint imposed. It is reasonable and proper to require Capital to purchase from Montana-Dakota and to require Montana-Dakota to sell to Capital, at book value, the distribution facilities currently located in and used by Montana-Dakota to serve part of Boulder Ridge 1<sup>st</sup> Addition, to the extent not duplicated by and compatible with Capital's system.

10. Under North Dakota Century Code Section 49-03-01.3 and precedents of the Commission the North Dakota Supreme Court, the Commission should not take a narrow view of its jurisdiction, particularly in view of the presumption of the constitutionality of the statutes under which it operates.

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

### Order

#### The Commission Orders:

1. Within 30 days after the date of this Order Montana-Dakota shall cease and desist from providing electric service to Boulder Ridge 1<sup>st</sup> Addition to the City of Bismarck and from further extending its electric service in that area.

2. Montana-Dakota shall offer to sell to Capital, and Capital shall purchase from Montana-Dakota, at book value, the distribution facilities located in and used by Montana-Dakota to serve Boulder Ridge First Addition, to the extent compatible with Capital's system and not constituting an unnecessary duplication of Capital's facilities.

3. So that users of electricity in Boulder Ridge First Addition shall not be without service, Montana-Dakota may continue to provide service beyond the 30 days referenced in ordering paragraph 1 until Capital can begin providing service.

4. Montana-Dakota's Motion to Dismiss Capital's Complaint is DENIED.

**PUBLIC SERVICE COMMISSION**

Voting "Nay"

---

**Susan E. Wefald  
Commissioner**

*Tony Clark* *Kevin Cramer*

---

**Tony Clark  
President**                      **Kevin Cramer  
Commissioner**

**CONCURRING OPINION**  
**Commissioner Tony Clark**

**June 22, 2006**

**Capital Electric Cooperative Inc. vs  
Montana-Dakota Utilities Co.  
Complaint**

**Case No. PU-05-551**

Let me begin by stating what this decision is not. It is not a slap at the Bismarck City Commission. The City of Bismarck has the right to franchise under state law, the PSC does not. This order simply acknowledges that the PSC is charged by the legislature to enforce Title 49 of the Century Code, while the City of Bismarck has the right to franchise within its borders. This order keeps those two issues separate. What is potentially at stake in the courts, is what happens when the manner in which a city issues franchises has the effect of causing utility companies to run afoul of state laws intended to protect consumers from unreasonable and uneconomic duplication of services.

Neither is this order any sort of grandiose statement on the Territorial Integrity Act (TIA). Few issues have given rise to such intense debate in our legislative sessions the past few years. Try as some have to entice the PSC to become involved in that debate, we have steadfastly refused to do so. Frankly, if PSC orders in these contentious matters are to be regarded as unbiased by the parties and the general public, then we must remain neutral on the larger policy questions regarding the statute itself. The law is what it is, and this order is simply the result of a dispassionate interpretation of the weight of the evidence presented to us.

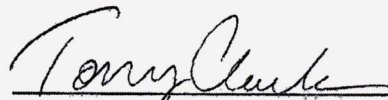
Now to the heart of the matter in this case. There is little doubt that MDU serving Boulder Ridge violates the spirit of the TIA. In fact, MDU effectively conceded as much by not presenting any evidence to the contrary. Rather, MDU asks the PSC to declare that holding a city franchise is a threshold, a prerequisite, to a public utility filing a valid interference complaint. In this case, Capital does not at this time hold such a franchise. But in asking the PSC to make this determination, MDU is asking us to do something we cannot. As an administrative agency, we are not to make such constitutional interpretations and reconciliations. That can only be made by our courts. The courts have previously dealt with issues of franchising, such as in the Divide County case (in which it is clear a utility must ultimately obtain a franchise if it is to operate within a city), but there is no guiding precedent given to us when we have the type of conflict presented to us in as in this case. The PSC must assume that the statutes we are charged with enforcing mean exactly what they say, and that they are constitutional. The legislature could have plainly stated that the TIA, as to be applied within municipalities, is only intended for a franchise holding utility. The legislature did not do so. I can only conclude that the legislature viewed wasteful duplication of services as a

separate issue from franchising. The decision I have come to is in no small part influenced by the guidance that the courts have given the PSC in stating that we should not go out of our way to find ways to limit too narrowly our own authority in enforcing what has been assigned to us by the legislature.

Admittedly, this leaves the situation unsettled. We now have a public utility, MDU, that is unable to provide service under state statute. Yet the provider, whose service is in accordance with state law, does not hold a valid city franchise. Again, this is an issue that is beyond the ability of the PSC to resolve, because the PSC has no authority over the manner in which cities franchise utilities. Reconciliation of these contradictions must be handled by the courts, or ultimately, the legislature.

It is entirely possible the courts will resolve the matter by simply creating a new threshold for the PSC to consider when executing our duties, specifically that a utility must first hold a franchise before the TIA applies. If this becomes the new standard, it seems apparent at this point that MDU will serve Boulder Ridge.

Or the courts could decide that the TIA stands separate from franchising. There would be any number of ways to address the outcome of such a decision if that is how the courts rule, but such speculation goes beyond the scope of this opinion.

  
\_\_\_\_\_  
Tony Clark, President

**CONCURRING OPINION**  
**Commissioner Kevin Cramer**

June 22, 2006

**Capital Electric Cooperative, Inc. vs.  
Montana-Dakota Utilities Co.  
Complaint**

**Case No. PU-05-551**

After careful and thorough review of the evidence in this case and attentive discussion with staff, I have concluded the most logical and defensible action the Public Service Commission can take is to find in favor of Capital Electric's complaint.

I believe this action, supported by a majority of the PSC, is the strongest position under the constitution and laws of North Dakota and serves as the best vehicle to advance the question of which company will serve this important growing area of Bismarck.

Although the "franchise" matter is still unresolved as all appeals are not yet exhausted in the courts, that is not an issue for PSC consideration as we are not authorized to decide constitutional issues.

The question in this complaint is does MDU's extension of distribution lines in Boulder Ridge interfere with and constitute an unreasonable duplication of investment and services provided by Capital? That question is easy to answer with the evidence and testimony presented by the parties. Yes it does.

Having said that, MDU's motion to dismiss on the basis of the franchise issued it by the City of Bismarck is hard to ignore. Especially following the District Court's opinion and decision upholding the city's position. Yet, I cannot reconcile that argument with the constitutional question of PSC authority without definitive direction from the courts and/or the legislature. Rather, the PSC's jurisdiction is limited to matters delegated to it by the legislature under NDCC Title 49. For the PSC to grant a dismissal based on the franchise argument seems arbitrary and capricious to me.

The motion to dismiss without prejudice is without any merit at this point in the process. It is a motion I could have and probably would have supported several months ago. But to simply act as though no hearings were ever held and no evidence presented nine months after the complaint was filed does nothing to move the issue toward resolution and diminishes the efforts of all of the parties who have invested so much in this case, including the PSC and our staff.

Whether the PSC would have granted MDU's motion to dismiss or find in favor of the complaint as we have, both are defensible positions certain to be appealed, at which time clarity will be provided by someone with the authority to provide it. I am hopeful this order will move the ball forward and resolve this dispute to the benefit of the citizens.

  
\_\_\_\_\_  
Kevin Cramer, Commissioner

**DISSENTING OPINION**  
**Commissioner Susan E. Wefald**

June 22, 2006

**Capital Electric Cooperative, Inc. vs.  
Montana-Dakota Utilities Co.  
Complaint**

**Case No. PU-05-551**

When making a determination under North Dakota Century Code Section 49-03-01.3 the Commission must give proper consideration to all four issues that are contained in this section of law.

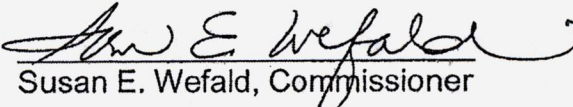
First, it has to consider whether the electric public utility is operating in the corporate limits of a municipality. The facts in this case are that in April of 2005, the service area in question was annexed to the city of Bismarck.

Second, Section 49-03-01.3 requires the Commission to determine if the electric public utility has "lawfully commenced operations." This important phrase dictates that the commission consider to which electric company the city has given a franchise. I agree that the Commission does not have jurisdiction regarding franchises under Article VII Section 11 of the North Dakota Constitution. That being said, it is important for the Commission to give the attention called for in Section 49-03-01.3 to this franchise issue. The facts in this case are that on November 14, 2005, the city of Bismarck awarded a franchise to Montana-Dakota Utilities Co. to serve the area in question in this case.

Third, Section 49-03-01.3 requires the Commission to consider whether "such extension or extensions" shall not interfere with existing services provided by a rural electric cooperative or another public utility within such a municipality. I generally agree with the Commission's findings in this order on these matters.

Finally, Section 49-03-01.4 requires the Commission to consider the following: "and provided duplication of services is not deemed unreasonable by the Commission." The Commission needs to consider all three of the preceding issues in order to come to a thoughtful conclusion to the final issue.

In this case, my fellow commissioners have given too much weight to the third issue of Section 49-03-01.3 and have failed to give enough consideration to issues one, two, and four.

  
Susan E. Wefald, Commissioner

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

**Montana-Dakota Utilities Co.**  
**Corey Botner**  
**Bismarck, North Dakota**  
**Public Convenience and Necessity**

**Case No. PU-04-560**

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

**June 8, 2005**

**Appearances**

Commissioners Tony Clark, Susan E. Wefald and Kevin Cramer.

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

Donald A. Negaard, Pringle & Herigstad, P.O. Box 1000, Minot, North Dakota 58702, appearing on behalf of Capital Electric Cooperative, Bismarck, North Dakota.

William W. Binek, Chief Counsel, North Dakota Public Service Commission, State Capitol, Bismarck, North Dakota 58505, appearing on behalf of the Public Service Commission.

Allen C. Hoberg, Office of Administrative Hearings, 1707 North 9<sup>th</sup> Street, Bismarck, North Dakota 58501-1882, appearing as Hearing Examiner.

**Preliminary Statement**

On October 11, 2004, Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., (Montana-Dakota) submitted a request for authority to extend temporary service for Corey Botner at a residential site located in the NE ¼ of NW ¼, Section 20, Township 138 North, Range 80 West, Burleigh County, North Dakota.

On October 18, 2004, Commissioner Susan Wefald authorized issuance of a Temporary Authority Permit for Montana-Dakota to serve the Botner location. On October 25, 2004, Montana-Dakota Utilities Co. filed its application under Chapter 49-03, N.D.C.C., for a Certificate of Public Convenience and Necessity to extend service for Corey Botner at the residential site location. Submitted with the application was a statement from Corey Botner that he desired electric service at the residential site to be provided by Montana-Dakota Utilities Co.

On October 27, 2004, the Commission issued a Notice of Opportunity for Hearing on the application. A protest to the application was filed November 23, 2004 on behalf

of Capital Electric Cooperative (CEC) requesting that Montana-Dakota's application be set for hearing.

On December 30, 2004, the Commission issued a Notice of Hearing scheduling a public hearing to begin on February 2, 2005. The notice identified the following issues to be considered:

1. From whom does the customer prefer electric service?
2. What electric suppliers are operating in the general area?
3. What electric supply lines exist within 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 application 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 suppliers in the area unreasonably interfere with the service or system of the other?

The Commission issued a Notice of Rescheduled Hearing on January 25, 2005 rescheduling the Hearing for April 4, 2005.

On April 4, 2005, a public hearing was held as scheduled. On April 14, 2005, Montana-Dakota filed a motion to accept a late filed exhibit.

Having heard and considered this matter, the Commission makes its:

### **Findings of Fact**

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

3. The Customer, Corey Botner owns approximately 27 acres of property located adjacent to the city limits of Bismarck immediately to the south of Burleigh Avenue. He intends to construct a home and shop on the property and seeks the extension of single-phase underground electrical service to the building site.

*From whom does the customer prefer electric service?*

4. Mr. Botner signed a Customer Appearance requesting electric service from Montana-Dakota. He also testified at the hearing in support of his request that electric service be extended by Montana-Dakota to his property.

5. Mr. Botner is an employee of MDU Resources Group, Inc. and testified that he wants to support the business activities of his employer. As an employee of MDU Resources Group, Inc., Mr. Botner receives a discount on electric and natural gas utility services purchased from Montana-Dakota.

6. Montana-Dakota's electric distribution line is already located on Mr. Botner's property. Mr. Botner testified that he does not want electric service facilities of a second electric supplier unnecessarily located on this property.

7. The Commission finds that the Customer prefers electric service from Montana-Dakota.

*What electric suppliers are operating in the general area?*

8. Montana-Dakota and CEC are the only retail electric suppliers operating in the general area.

*What electric supply lines exist within a two mile radius of the location to be served and when were they constructed?*

9. Montana-Dakota has several distribution lines within two miles of the Botner property. Its feeder distribution line for this area is a three phase primary line built in 1941 that originates from a substation located near Tacoma Avenue and 12<sup>th</sup> Street. The line extends south along 12<sup>th</sup> Street to Burleigh Avenue. The three phase line was extended west on Burleigh Avenue from 12<sup>th</sup> Street to a location west of Washington Street and also south on Washington Street from Burleigh Avenue to 48<sup>th</sup> Avenue and west for approximately one and one-half miles. These line extensions were constructed in 1946 and rebuilt in 1961. In 1966 the three phase line on Burleigh Avenue was extended further west to its current location on the Botner property where it continues in a northwesterly direction to the Bismarck lagoon system. In 1970, an underground primary distribution line was extended from Montana-Dakota's South 9<sup>th</sup> Street substation along a drainage ditch to Washington Street then south to London Avenue and west to the Bismarck lagoon. This extension allows the feeder distribution line along Burleigh Avenue to be looped when necessary.

10. CEC has several distribution lines within two miles of the Botner property. It has a three phase feeder distribution line located along Burleigh Avenue from Washington Street to England Street. This line was built as a single phase line in 1950 on the south

side of Burleigh Avenue. The line was moved to the north side of Burleigh Avenue in 1967. In 1975 the single phase line was converted to a three phase line. CEC also has a feeder distribution line along Washington Street between Burleigh Avenue and CEC's south Washington substation. This line was built in 1950 and converted to a three phase line in 1967. CEC is able to loop feed this area.

11. The facilities needed by either electric supplier to provide electric service to the Botner location include a primary distribution line extension from its existing feeder distribution line to the Botner service location and a transformer at the end of the primary extension.

12. CEC's closest existing facility is its three phase primary distribution line located on the north side of Burleigh Avenue. This facility is approximately 380 feet from the proposed service location for the Botner residence. An extension from CEC's feeder distribution line to the Botner property would require boring of Burleigh Avenue and crossing under the existing overhead feeder distribution line of Montana-Dakota.

13. Montana-Dakota's closest existing facility from which service could be extended to the Botner service location is its three phase primary distribution line located on the south side of Burleigh Avenue. This feeder distribution line is located on the northern edge of Botner's property and is approximately 320 feet from the proposed service location for the Botner home. Montana-Dakota's extension would not cross Burleigh Avenue or CEC's facilities.

14. The Commission finds that both suppliers have three phase primary distribution lines within two miles of the Botner location.

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

15. Montana-Dakota serves approximately 1,805 customer service locations within two miles of the Botner property. These customer locations include multiple dwelling units such as apartment buildings that have more than one service customer at the location.

16. CEC serves approximately 1,200 customers within two miles of the Botner property.

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

17. Service by either supplier would be from three phase primary feeder distribution lines that can be operated in a looped fashion in the event of an outage.

18. The Commission does not find significant differences between the suppliers with respect to reliability of service.

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

19. Service by Montana-Dakota requires an underground line extension of 319 feet, and a pad mounted transformer. Montana-Dakota's actual cost of the temporary extension, including engineering services and general administrative overheads, was \$3,590.61. This amount is higher than the amount included in the application for temporary service authority because it includes the cost of a transformer and meter, which are useable at other locations and therefore are not considered part of the cost of a temporary extension. In addition, the actual installation was approximately 42 feet further from Montana-Dakota's feeder distribution line than originally anticipated. The installation was also delayed to enable shared trenching, which increased installation costs because of frozen ground conditions. In addition, some hand trenching was necessary in an area around underground telephone and CATV lines, which was not anticipated at the time the temporary service application was prepared.

20. CEC's cost to extend service to the Botner property would be greater than Montana-Dakota's cost because its feeder line is 60 feet further from the service location and CEC would need to bore Burleigh Avenue for the extension. Boring costs and increased conductor length would result in costs of about \$700 more than Montana-Dakota's costs.

21. Based upon the anticipated service needs at the Botner location, Montana-Dakota estimates that the annual electric consumption for the location will be approximately 12,676 KWh. Montana-Dakota's charges to serve this annual consumption under its current rates would be \$874.80. As an employee of MDU Resources Group, Inc., Mr. Botner receives an employee benefit equal to one-third of the amount billed for his Montana-Dakota gas and electric utility charges. This discount is treated as a part of Mr. Botner's employee compensation and allocated as a labor expense accordingly. Mr. Botner receives this employee discount at his current residential location. The discounted utility service at that location will end at the time that Mr. Botner changes his residence.

22. Montana-Dakota's cost of fuel to supply the estimated annual electric consumption at the Botner location is \$161.00. Subtracting the cost of fuel from the anticipated gross revenues results in estimated annual net revenue of \$713.80 to Montana-Dakota from the provision of service to the Botner location. Montana-Dakota's required rate of return on its net invested capital is 10.016 percent. Based on an investment of \$3,590.61 to extend facilities to the Botner location, Montana-Dakota needs pretax net revenues of \$595.53 to recover its required rate of return on this investment. Accordingly, Montana-Dakota's net revenues from providing electric service at the Botner location will allow it to earn an adequate rate of return on its investment to extend service and also provide a net annual contribution of \$118.27 to common system costs.

23. Based on its current rates, CEC's charges to provide service for the estimated annual electric consumption at the Botner location are \$1,050.15. CEC did not introduce evidence of whether this revenue would produce net revenues to provide an adequate return on its investment.

24. The Commission finds that Montana-Dakota can serve the Botner location more economically because Montana-Dakota's distribution line is closer to the location and it is not necessary to bore the road in order to serve the Botner location.

25. Although CEC did not introduce evidence on the question of net revenues from its provision of service, the Commission believes that comparing CEC's estimated revenue with CEC's estimated cost of providing service to the location indicated that CEC can earn a positive return on its investment in serving the Botner location.

26. The Commission finds that either Montana-Dakota or CEC can serve the location and earn an adequate return on investment.

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

27. In *Otter Tail Power Company/Neil Heitkamp, Public Convenience and Necessity*, PSC Case No. PU-401-97-491 (Decided on Rehearing December 31, 1998), the Commission found that service to the customer by Otter Tail Power Company ("Otter Tail") would best serve orderly and economic development of electric service in the general area. One of the primary factors considered by the Commission on rehearing in that case was that an extension of service by the Rural Electric Cooperative (REC) would cross Otter Tail's existing line.

28. The Commission finds that service by Montana-Dakota would best serve orderly and economic development of electric service in the general area. Montana-Dakota is able to extend service to the site through a shorter extension at a lower cost, which is a primary consideration of orderly and economic development. Service by Montana-Dakota to the Botner location is a natural extension of service from Montana-Dakota's existing facilities and will not result in checker boarding of customers served by Montana-Dakota and CEC. Service by CEC to the Botner location would require CEC to cross Montana-Dakota's line.

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

29. One factor to be considered in determining whether duplication of facilities has occurred is whether construction of service to a customer from one supplier exceeds the cost to extend service to that same customer from a second supplier. In this case, CEC's cost to extend service 380 feet and bore the road exceeds Montana-Dakota's cost to extend service 320 feet.

30. Another factor considered in determining duplication of service is whether a supplier's extension of facilities would need to cross the facilities of another supplier. The Commission has consistently held that one electric supplier crossing the line of another electricity supplier to provide service to a customer indicates a wasteful duplication of facilities. In *Montana-Dakota Utilities Co./Intoil, Public Convenience and Necessity*, PSC Case No. PU-399-93-9 (Decided February 24, 1993) the Commission found that MDU's service extension would cross over the REC's line and concluded that granting of MDU's application would result in wasteful duplication of the REC's existing facilities. The primary purpose of the Territorial Integrity Act is ". . . [T]o keep to a minimum wasteful duplication of capital-intensive utility services and conflicts between suppliers of electricity." *Cass County Electric Cooperative v. Northern States Power Company*, 419 N.W.2d 181, 187 (N.D. 1988). The question of which electric supplier's facility is duplicative or wasteful is a question of fact for the Public Service Commission to determine. *Northern States Power Company v. Public Service Commission*, 452 N.W.2d 340, 345 (N.D. 1990).

31. The Commission recognizes that CEC has made significant investment, including the South Washington Street Substation, in the area of the Botner location, but in this instance CEC would have to cross Montana-Dakota's line for CEC to extend its facilities to the Botner location. Montana-Dakota does not need to cross CEC's facilities for a similar extension. The Commission finds that approving Montana-Dakota's application will not result in wasteful duplication of investment or service but that denial of the application will result in wasteful duplication of investment and services.

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

32. There is no evidence of any plans by the City of Bismarck to annex the site. Mr. Botner does not have plans to request annexation of his property to the City of Bismarck.

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

33. Both suppliers acknowledge that extension of service by the other would not physically interfere with the service or system of the other supplier.

34. Montana-Dakota argues that the Area Service Agreement that existed between the parties was void as a matter of law and was cancelled by Montana-Dakota. CEC is not asking the Commission to enforce or construe this agreement. The Area Service Agreement and CEC's franchise with the City of Bismarck have no relevance in the Commission's determination of an application for a Certificate of Public Convenience and Necessity outside the corporate limits of the City of Bismarck. Moreover, CEC did not rely on the Area Service Agreement in constructing the feeder line it would use to serve the Botner location.

35. The Commission finds that extension of service by either supplier would not unreasonably interfere with the service or system of the other.

From the forgoing 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.

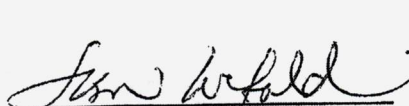
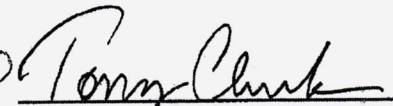
From the foregoing Findings of Fact and Conclusions of Law, the Commission issues its:

**Order**

The Commission Orders:

Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. is issued Certificate of Public Convenience and Necessity No. 5247, authorizing the provision of electric distribution service to Corey Botner at a location in the NE ¼ of the NW ¼, Section 20, T138N, R080W, Burleigh County, North Dakota.

**PUBLIC SERVICE COMMISSION**

		Absent
<hr/>	<hr/>	<hr/>
Susan E. Wefald Commissioner	Tony Clark President	Kevin Cramer Commissioner