



UTILITIES CO.

A Division of MDU Resources Group, Inc.

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

May 25, 2017

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

Re: Application for Approval of Service  
Area Agreement & Request for a Certificate  
of Public Convenience & Necessity-  
South Heart, North Dakota  
Case No. PU-17-\_\_\_\_\_  
Case No. PU-17-\_\_\_\_\_

Enclosed are the original and seven copies of a joint Application made by Roughrider Electric Cooperative ("Roughrider") and Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. ("Montana-Dakota"), for approval of a Service Area Agreement to establish service areas and to designate service locations to be served by Montana-Dakota and Roughrider within the City of South Heart and the surrounding area.

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

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

Sincerely,

Tamie Aberle  
Director of Regulatory Affairs

Attachments

cc: Karl Liepitz

Don Franklund  
Craig Lohstreter  
Jennifer Grosz

- 1 PU-17-231 Filed 05/25/2017 Pages: 14  
Application for service area agreement and Cert. of PC & N  
Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.  
Tamie Aberle
- 1 PU-17-230 Filed 05/25/2017 Pages: 14  
Application for service area agreement and Cert. of PC & N  
Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.  
Tamie Aberle

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

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

Case No. PU-17-\_\_\_\_\_

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

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

Notices regarding this matter should be directed to:

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

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

Karl Liepitz  
Associate General Counsel  
MDU Resources Group, Inc.  
PO Box 5650  
Bismarck, ND 58502-5650  
Telephone: (701) 530-1081  
[karl.liepitz@mduresources.com](mailto:karl.liepitz@mduresources.com)


**For Roughrider Electric Cooperative:**

Don Franklund  
Co-General Manager/CEO  
Roughrider Electric Cooperative  
2156 4<sup>th</sup> Avenue East  
Dickinson, ND 58601  
Telephone: (701) 483-5111

Dated this 25<sup>th</sup> day of May 2017.

Respectfully submitted,

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



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By: Tamie Aberle  
Director of Regulatory Affairs

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

Roughrider Electric Cooperative/  
Montana-Dakota Utilities Co.  
South Heart Service Area Agreement

Case No. PU-17-\_\_\_\_\_

**Application for Approval of Service Area Agreement**

Roughrider Electric Cooperative, (“Roughrider”), an electric cooperative organized under N.D.C.C. Chapter 10-13, and Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., (“Montana-Dakota”), an electric public utility, submit this joint application for approval of a Service Area Agreement pursuant to N.D.C.C. § 49-03-06. The Service Area Agreement, which accompanies this Application, was entered into by Montana-Dakota and Roughrider as electric providers in compliance with the provisions of N.D.C.C. § 49-03-06 to establish service areas and to designate service locations to be served by Montana-Dakota and Roughrider within the City of South Heart and the surrounding area. The Service Area Agreement complies with N.D.C.C. § 49-03-06 and is in the public interest because it will: (1) avoid misunderstanding and disagreement over areas to be served by each party, (2) accomplish the legislative intent of N.D.C.C. § 49-03-06 to encourage harmony and operational efficiency among electric providers, promote safety, discourage unreasonable duplication of electric facilities, assure adequate and reliable electric service and provide antitrust immunity to the electric providers, and (3) provide both parties with equitable participation in the provision of electric distribution service within undeveloped areas annexed to the City of South Heart during the term of the Agreement. The City of South Heart has approved the Service

Area Agreement and issued franchise agreements to Montana-Dakota and Roughrider on February 6, 2017.

Montana-Dakota and Roughrider request the North Dakota Public Service Commission, after Notice as provided in N.D.C.C. § 49-03-06(4), approve the Service Area Agreement after finding the Agreement in Compliance with N.D.C.C. § 49-03-06 and in the public interest.

Notices regarding this matter should be directed to:

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

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

Karl Liepitz  
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Bismarck, ND 58502-5650  
Telephone: (701) 530-1081  
[karl.liepitz@mduresources.com](mailto:karl.liepitz@mduresources.com)

**For Roughrider Electric Cooperative:**

Don Frankund  
Co-General Manager  
Roughrider Electric Cooperative  
2156 4<sup>th</sup> Avenue East  
Dickinson, ND 58601  
Telephone: (701) 483-5111

Jennifer Grosz  
Attorney  
Ebeltoft Sickler PLLC  
2272 8<sup>th</sup> Street West  
Dickinson, ND 58601  
Telephone: (701) 225-5297

Dated this 25<sup>th</sup> day of May 2017.

Respectfully submitted,

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



By: Tamie Aberle  
Director of Regulatory Affairs

Roughrider Electric Cooperative, Inc.



By: Don Frankund  
Co-General Manager/CEO

## **SERVICE AREA AGREEMENT**

This Service Area Agreement (Agreement) is between Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., 400 North Fourth Street, Bismarck, ND 58501 (Montana-Dakota), and Roughrider Electric Cooperative, Inc., 2156 4<sup>th</sup> Avenue E., Dickinson, ND 58601 (Roughrider).

### **RECITALS**

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

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

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

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

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

Montana-Dakota and Roughrider agree to the following:

1. **Areas Governed.** The areas governed by this Agreement are those areas currently within the City of South Heart, the areas shaded in green and red on the attached map currently outside the City of South Heart, and such other areas outside of the green and red shaded areas on the attached map that are annexed to the City of South Heart during the term of this Agreement. The provision of electric distribution service outside the geographic scope of this Agreement shall be governed by applicable law, any future amendments extending the scope of this Agreement, or new service area agreements that may be made between the parties.

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

The term "Existing Service Location" shall mean the Service Locations to which a party provides service as shown by its books and records as of the effective date of this Agreement. The term includes all expansions, improvements, or additions to a Service Location made after the date of signing of this Agreement that do not amount to a New Service Location. Any changes to Service Locations between the date the parties sign this Agreement and its effective date will be provided to the other party within 10 business days from the effective date of this Agreement.

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

- o Replacement of single phase family/farm use to three phase commercial/industrial or three phase high density residential use (18 or more units); and
- o Replacement of single phase commercial/industrial use to three phase commercial/industrial use of 1.0 MW or greater of connected load.

3. Montana-Dakota Service Area. The service area of Montana-Dakota is that area governed by this Agreement shaded in red on the attached map, incorporated by reference as integral to this Agreement. Montana-Dakota will provide retail electric service in this service area, and Roughrider shall not provide retail electric service in this service area, except as otherwise provided in this Agreement or in any amendment to this Agreement. That is, unless changed by the written consent of both parties, Montana-Dakota will serve all of its Existing Service Locations and all New Service Locations in its service area while Roughrider will continue to serve only its Existing Service Locations in Montana-Dakota's service area. Roughrider may serve New Service Locations within Montana-Dakota's service area only as provided in this Agreement or in any amendment to this Agreement.

4. Roughrider Service Area. The service area of Roughrider is that area governed by this Agreement shaded in green on the attached map, incorporated by reference as integral to this Agreement. Roughrider will provide retail electric service in this service area and Montana-Dakota shall not provide retail electric service in this service area, except as otherwise provided in this Agreement or in any amendment to this Agreement. That is, unless changed by the written

consent of both parties, Roughrider will serve all of its Existing Service Locations and all New Service Locations in its service area while Montana-Dakota will continue to serve only its Existing Service Locations within Roughrider's service area. Montana-Dakota may serve New Service Locations within Roughrider's service area only as provided in this Agreement or in any amendment to this Agreement.

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

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

6. Service Location Disputes. This Agreement is subject to the continuing jurisdiction of the North Dakota Public Service Commission to settle Service Location and service area disputes arising under the Agreement.
7. Duplication of Facilities. The parties will avoid unreasonable duplication of facilities in order to provide electric service for all consumers efficiently and economically. The incidental duplication of some facilities, however, will not violate or serve as grounds to alter this Agreement.
8. Sale, Transfer, Exchange or Lease of Equipment or Facilities. A sale, transfer, exchange or lease of equipment or facilities owned by one party but located in the other party's service area may be made with the written consent of both parties. To the extent applicable, a sale, exchange, transfer or lease of equipment or facilities made under this section of this Agreement is subject to §49-04-05 and §10-13-08.1 N. D. Cent. Code.
9. Tapping Facilities. A temporary tap of one party's facilities may be made by the other with the written consent of both parties to an interconnection agreement and/or electric wheeling agreement governing the terms of the tap.
10. Adjustment of Service Areas. It is the intent of the parties that after the effective date of this Agreement, each party shall have a reasonable opportunity to serve approximately fifty percent (50%) of the undeveloped potential electric service growth annexed to the City of South Heart during the term of this Agreement. The parties shall meet as needed to determine and designate the service area or service areas within which each new area proposed for annexation outside the

green and red shaded areas on the attached map should be included. This designation should be provided to the City of South Heart.

After the tenth calendar year following the effective date of this Agreement, each party has one opportunity to request, in writing, a formal review and adjustment of the boundaries of the service areas described in paragraphs 3 and 4 and as illustrated in red and green shaded areas on the attached map if the number of New Service Locations within that party's service area, but excluding any Service Location served by the other party, since the effective date of this Agreement was less than forty percent (40%) of the total number of New Service Locations within the areas governed by this Agreement, including areas added as a result of annexation to the City of South Heart.

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

If a party requests adjustment of the service area boundaries under this section 10 and the parties are unable to agree upon such adjustment, a party may request the dispute be submitted to mediation with a mediator mutually agreeable to the parties. A party shall submit a written request for mediation to the other, stating the issue(s) to be mediated and providing a list of proposed mediators acceptable to the requesting party. If the parties cannot agree to a mediator within fifteen (15) business days following a party's receipt of such written request for mediation from the other party, the issue(s) identified in the request(s) will be resolved by private arbitration, using such arbitrator, rules and terms as agreed by the parties. If the parties cannot agree upon an arbitrator, arbitration rules and terms within fifteen (15) business days after failure to select a mediator the issue(s) identified in the request(s) will be resolved by private arbitration, in accordance with the expedited commercial Rules of the American Arbitration Association, but by a panel of three arbitrators, with each party choosing an arbitrator and the two arbitrators so chosen choosing a third. If a mediator is accepted, then the parties shall work with the mediator to secure a mutually acceptable mediation date as soon as is practicable. If the mediation is ultimately unsuccessful, the dispute shall be submitted to private arbitration through the process described above.

The third-party costs and expenses of any mediation or arbitration shall be borne equally by the parties.

11. Scope of the Agreement. This Agreement governs electric distribution service by the parties to Service Locations within the areas governed by this Agreement. This Agreement does not apply to nor does it affect the rights of either party:

- To construct transmission or distribution line facilities in the other party's service area for the purpose of providing adequate electric power in any area it serves;
- To maintain existing transmission or distribution line facilities in the other party's service area for the purpose of providing adequate electric power in any area it serves;
- To the provision of electric transmission or distribution services outside of the areas governed by this Agreement; or
- Under applicable law, except only to the extent specifically enumerated herein.

ARTICLE II.  
RELATIONSHIPS WITH OTHER ENTITIES

12. Filing the Agreement for Approval. This Agreement shall be filed with the North Dakota Public Service Commission and the City of South Heart substantially concurrent with its execution. Both parties will file written statements with and appear before the North Dakota Public Service Commission and the South Heart City Council supporting unconditional approval of this Agreement.
13. Filing Franchise Agreements for Approval. Substantially concurrent with the filing of this Agreement with the City of South Heart, the parties shall jointly request the South Heart City Council to issue new 20-year electric utility franchises to each party. The terms of each franchise are to be substantially in the form attached hereto, authorizing each party to provide electric distribution service to Service Locations within the areas governed by this Agreement and containing terms otherwise consistent with this Agreement. Both parties will file written statements with and appear before the South Heart City Council supporting unconditional approval of each franchise.
14. Conditions Precedent to Agreement. This Agreement is subject to approval of the North Dakota Public Service Commission and the South Heart City Council. If this Agreement is disapproved by either entity, or if the South Heart City Council does not grant franchises consistent with the terms of this Agreement before May 1, 2017, this Agreement shall be void *ab initio*.
15. Future Requests for Certificates of Public Convenience and Necessity. After the effective date of this Agreement, in all cases under the provisions of Chapter 49-03 N. D. Cent. Code, when Montana-Dakota applies to the North Dakota Public Service Commission for a certificate of public convenience and necessity to extend its electric service to a New Service Location, provided that such does not violate the terms of this Agreement, Roughrider shall not object to Montana-Dakota's application.
16. Future Reports to City and Public Service Commission. After the effective date of this Agreement, the parties will report any transactions under paragraph 5 or any adjustment under paragraph 10 to the North Dakota Public Service Commission and the City of South Heart, to the extent required by law, regulation, franchise or ordinance.

17. Review Requirement. It is realized that this Agreement will not cover all conditions that may arise but, if followed in good faith by both parties, will serve as a guide to future development and growth for both parties. The parties shall meet on a bi-annual basis to review the operation of this Agreement and the parties' respective growth in electric service within the areas governed by this Agreement since the effective date of this Agreement.

ARTICLE III.  
EFFECTIVE DATE AND TERM

18. Effective Date. This Agreement shall become effective on the first day of the month following the date of the last of these events:
- o Approval of this Agreement by the North Dakota Public Service Commission;
  - o Approval of this Agreement by the South Heart City Council.
19. Term. Unless terminated sooner by the written consent of both parties, this Agreement shall continue from its effective date through February 28, 2037.

Either party may give written notice to the other on or before February 28, 2036 of its intent to terminate the Agreement at the end of its term.

If neither of the foregoing two events occurs, this Agreement shall remain in force after February 28, 2037, until either party gives twelve months' written notice to the other party of its intent to terminate this Agreement or negotiate a new agreement consistent with the intent and purpose of this Agreement. It is the intent of the parties that upon or prior to termination of this Agreement, they will enter into negotiations for a new service area agreement to provide both parties with a reasonable opportunity for equitable participation in the future provision of electric distribution service to New Service Locations within the unserved areas annexed to or reasonably anticipated to be annexed to the City of South Heart.

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

ARTICLE IV.  
MISCELLANEOUS PROVISIONS

20. Entire Agreement. This Agreement, including the attachments, constitutes the parties' entire agreement. It supersedes and terminates all previous agreements, written or oral, between the parties with respect to matters included within the scope of this Agreement.
21. Waiver of Certain Rules of Construction. This Agreement is the result of good faith negotiations between the parties, each having equal bargaining status and

each having participated in the drafting of this Agreement to express the parties' intentions. Accordingly, each party waives the benefit of any rule of contract interpretation premised on the other party's responsibility for drafting the Agreement or the other party's bargaining status.

22. Independence of the Parties. The parties are entirely independent and neither have the right to act for or control the other. This Agreement does not create a joint venture, partnership or other agency relationship between the parties.
23. No Third-Party Rights. This Agreement confers no rights or obligations upon anyone other than the parties. It may be enforced solely by the parties. This Agreement creates no third-party beneficiaries.
24. Assignment. Either Party may assign this Agreement in connection with a merger, sale of substantially all of its assets, consolidation or other reorganization resulting in another acquiring the right of a party to provide electric service in the service area of that party.
25. Waiver of Right of Enforcement. The failure of either party to require strict performance of any portion of this Agreement or the waiver of a breach of any condition in this Agreement shall not waive or affect that party's right to require full and conforming performance thereafter.
26. Partial Invalidity. Each provision of this Agreement is to be interpreted to make this Agreement effective and enforceable under applicable law. If any provision is held invalid or unenforceable, the remainder of this Agreement is not to be affected thereby but is to be reformed only to the extent necessary to make the Agreement effective and enforceable as if the invalid or unenforceable provision had never been included in the Agreement.
27. Notices. All notices from one party to the other shall be given in writing to the address for the party stated above, by any means of delivery that provides for confirmation of delivery to that address.

[Signatures on Following Page]

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

*Muole A Vento*

\_\_\_\_\_  
President & Chief Executive Officer

ATTEST:

*[Signature]*  
\_\_\_\_\_  
Assistant Secretary

Date: 12/14/16

ROUGH RIDER  
ELECTRIC COOPERATIVE, INC.

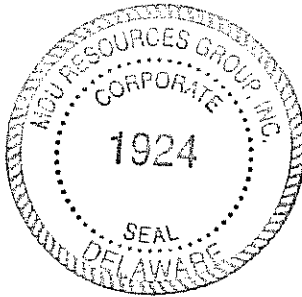
*Roger Kudrna*

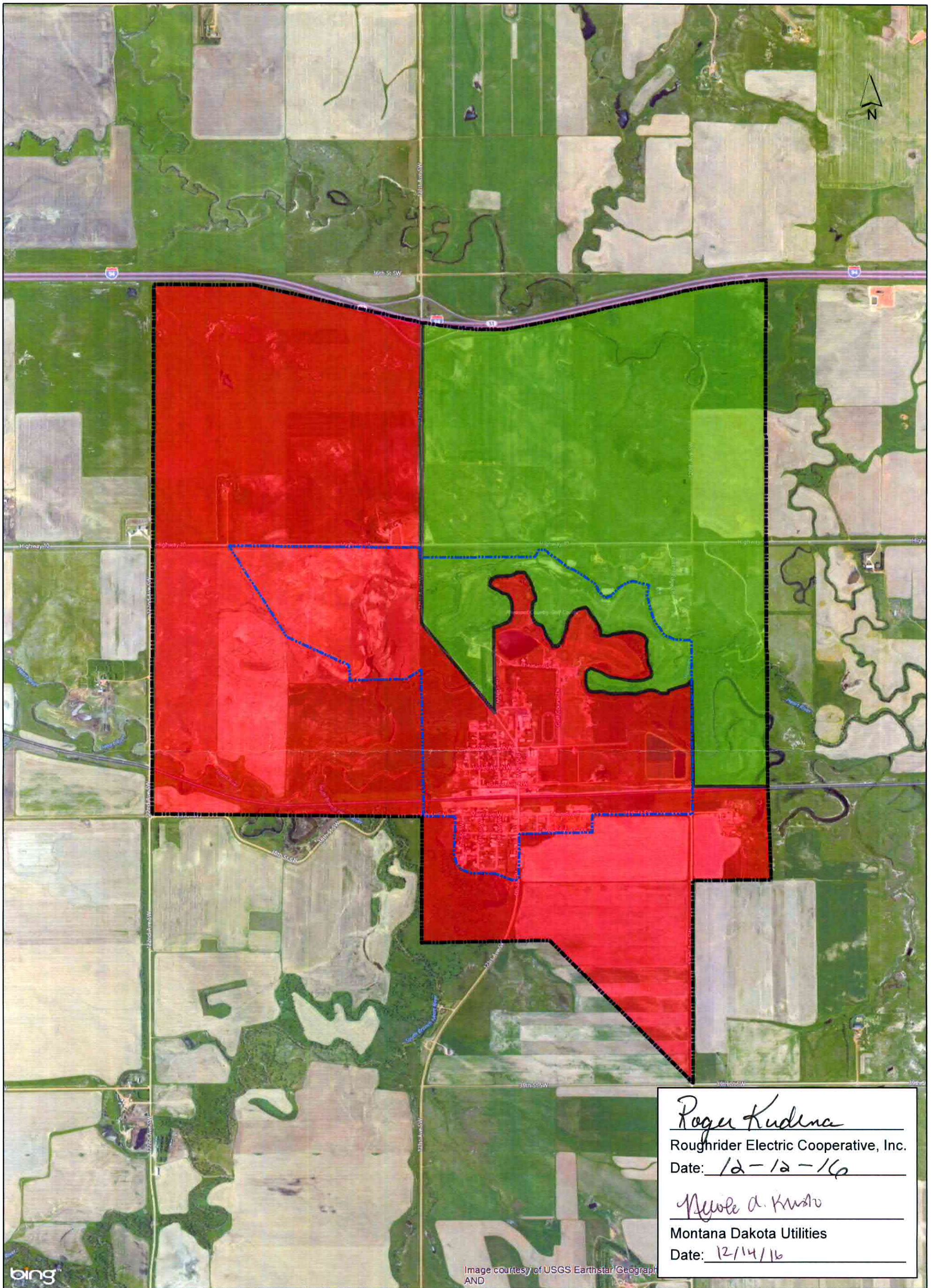
\_\_\_\_\_  
President

ATTEST:

*[Signature]*  
\_\_\_\_\_  
Secretary

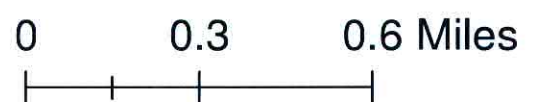
Date: 11/28/16





**South Heart, ND**  
**Service Area Agreement - 2016**  
**Roughrider Electric Cooperative & Montana Dakota Utilities**

- City Limits
- Roughrider Electric Cooperative
- Montana Dakota Utilities Co.



Date: 12/8/2016  
 Drawn By: TMS