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**FEB 22 2007**

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

MONTANA-DAKOTA UTILITIES CO. )  
)  
APPELLANT, )  
)  
-vs- )  
)  
SOUTH DAKOTA PUBLIC UTILITIES )  
COMMISSION, FEM ELECTRIC )  
ASSOCIATION, INC., NORTH )  
CENTRAL FARMERS ELEVATOR, )  
AND THE SOUTH DAKOTA RURAL )  
ELECTRIC ASSOCIATION, )  
)  
APPELLEES. )

APPELLANT'S  
DOCKETING STATEMENT  
# \_\_\_\_\_

**SECTION A. TRIAL COURT**

1. The circuit court from which the appeal is taken: Hughes County Circuit Court.
2. The county in which the action is venued at the time of appeal: Hughes County.
3. The name of the trial judge who entered the decision appealed: Honorable James W. Anderson.

**PARTIES AND ATTORNEYS**

4. Identify each party presently of record and the name, address, and phone number of the attorney for each party.

Montana-Dakota Utilities Co.  
David A. Gerdes  
May, Adam, Gerdes & Thompson  
P.O. Box 160  
Pierre, SD 57501-0160  
605-224-8803

South Dakota Public Utilities Commission:

John J. Smith  
Assistant Attorney General  
500 East Capitol Avenue  
Pierre, SD 57501  
605-773-3201

North Central Farmers Elevator:

Carlyle E. Richards  
Richards & Oliver  
P.O. Box 114  
Aberdeen, SD 57402-0114  
605-225-1200

FEM Electric Association, Inc., North Central Farmers  
Elevator and the South Dakota Rural Electric Association:

Darla Pollman Rogers  
Riter Rogers Wattier & Brown  
P.O. Box 280  
Pierre, SD 57501-0280  
605-224-5825

**SECTION B. TIMELINESS OF APPEAL**

1. The date the judgment or order appealed from was signed and filed by the trial court: January 31, 2007.

2. The date notice of entry of the judgment or order was served on each party: February 1, 2007.

3. State whether either of the following motions were made:

a. Motion for judgment n.o.v., SDCL § 15-6-50(b)

\_\_\_\_\_ Yes  No

b. Motion for new trial, SDCL § 15-6-59:

\_\_\_\_\_ Yes \_\_\_\_\_ No

**NATURE AND DISPOSITION OF CLAIMS**

4. State the nature of each party's separate claims, counterclaims or cross-claims and the trial court's disposition of each claim. The Case is an appeal from a decision of the South Dakota Public Utilities Commission holding that Montana-Dakota ". . . has no standing to assert legal rights or contest legal obligations on North Central's behalf, and . . . has no standing to assert North Central's right under SDCL § 49-34A-56 to relief from its obligation to take service for a new facility from the assigned service provider." North Central Elevator is a new customer in a new location seeking to install a grain handling facility near Bowdle, South Dakota, which comes within the "large load exception" to the South Dakota Electric Territorial Law. Notwithstanding that Montana-Dakota was an electric utility ready, willing and able to provide service to the facility contacted by the customer, North Central, the Commission ruled that Montana-Dakota had no standing to initiate a proceeding under Section 56 when North Central selected the inferior offer of FEM, the incumbent provider. The Commission, FEM and North Central contend that the Commission is without jurisdiction to entertain a petition by Montana-Dakota under the large load statute. Montana Dakota contends that it has the superior offer under the six criteria of the large load statute, that Montana-Dakota's offer conforms to this Court's longstanding policy underlying the Territorial Act to eliminate duplication and wasteful spending in all segments of the electric utility industry, and that neither the statute nor the Territorial Act contemplate "customer choice" under the large load statute.

The trial court summarily affirmed the PUC.

5. Appeals of right may be taken only from final, appealable orders. See SDCL § 15-26A-3 and 4.

a. Did the trial court enter a final judgment or order that resolves all of each party's individual claims, counterclaims, or cross-claims?

  x   Yes                             No

b. If the trial court **did not** enter a final judgment or order as to each party's individual claims,

counterclaims, or cross-claims, did the trial court made a determination and direct entry of judgment pursuant to SDCL § 15-6-54(b)?

\_\_\_\_\_ Yes                      \_\_\_\_\_ No

6. State each issue intended to be presented for review.
- A. Montana-Dakota had standing to initiate a proceeding under the large load statute as an electric utility communicating with and offering to serve a large load customer under SDCL § 49-34A-56.
- B. Neither the large load statute itself nor the Territorial Act in its entirety restricts the initiation of a proceeding under the large load statute to the customer, notwithstanding decisional dicta urged by Appellees to provide to the contrary.
- C. Questions of material fact precluded summary disposition by the Commission, where Montana-Dakota evidence directly contradicted FEM's contention that the contracted load was less than 2,000 kilowatts and North Central Elevator's manager had indicated to Montana-Dakota personnel that he was entertaining rate offers from both FEM and Montana-Dakota.

No memorandum opinion was issued. A transcript of the Court's oral pronouncement has been ordered.

Dated this 21<sup>st</sup> day of February, 2007.

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

DAVID A. GERDES  
Attorneys for Appellant  
503 South Pierre Street  
P.O. Box 160  
Pierre, South Dakota 57501-0160  
Telephone: (605)224-8803

CERTIFICATE OF SERVICE

David A. Gerdes of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 21<sup>st</sup> day of February, 2007, he mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the foregoing in the above-captioned action to the following at their last known addresses, to-wit:

John J. Smith  
Assistant Attorney General  
SD Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501

Carlyle E. Richards  
Richards & Oliver  
P.O. Box 114  
Aberdeen, SD 57402-0114

Darla Pollman Rogers  
Riter Rogers Wattier & Brown  
P.O. Box 280  
Pierre, SD 57501-0280

A handwritten signature in black ink, appearing to read "David A. Gerdes", written over a horizontal line.

David A. Gerdes