

**Scott, Sandi L.**

---

**From:** Binek, William W.  
**Sent:** Monday, December 19, 2005 3:00 PM  
**To:** Scott, Sandi L.  
**Subject:** FW: Capital Electric v. Montana Dakota Utilities Co Complaint; Our File No. 05-551

---

**From:** Kuntz, Dan [mailto:Dan.Kuntz@MDUResources.com]  
**Sent:** Wednesday, December 14, 2005 11:53 AM  
**To:** Bendish, Annette M.; Carol Larson  
**Cc:** Binek, William W.; Goodin, Dave; Morehouse, Frank  
**Subject:** RE: Capital Electric v. Montana Dakota Utilities Co Complaint; Our File No. 05-551

Annette,

Capital Electric cannot sustain bifurcated self-induced or self-initiated procedures, one in an administrative proceeding and one in the judicial process covering the same legal questions. [Transportation Division of Fargo Chamber of Commerce v. Sandstrom, 337 N.W. 2d 160 \(N.D. 1983\)](#); [Tooley v. Alm, 515 N.W. 2d 137 \(N.D. 1994\)](#) Capital has initiated a declaratory action in District Court which can only be brought if there is no available administrative remedy on the same issue. Capital cannot, in good faith, maintain a declaratory judgment action on the premise that it does not have an adequate remedy before the Commission while continuing to resist dismissal of this proceeding. Capital should decide its position of whether the Commission does or does not have jurisdiction and dismiss either this proceeding or the declaratory judgment action. Montana-Dakota requests that its motion for dismissal based on lack of jurisdiction be set for hearing as soon as possible if Capital does not voluntarily agree to dismiss its complaint. I assume that such a hearing would essentially be oral argument unless Capital contests the authenticity of the City Commission order submitted with Montana-Dakota's motion, which it has not in its responsive pleading.

Dan

-----Original Message-----

**From:** Bendish, Annette M. [mailto:abendish@state.nd.us]  
**Sent:** Wednesday, December 14, 2005 11:22 AM  
**To:** Kuntz, Dan; Carol Larson  
**Cc:** Binek, William W.  
**Subject:** Capital Electric v. Montana Dakota Utilities Co Complaint; Our File No. 05-551

Dan and Carol,

The Commission discussed this matter during the Administrative portion of its meeting today and would like to hear from the parties as to how they wish to proceed. Essentially the Commissioners propose three options:

1. Postpone any Commission action until after the district court matter is resolved;
2. Schedule a hearing to address only the jurisdiction/motion to dismiss currently pending before the Commission;
3. Re-schedule the hearing as originally noticed and address all issues while the district court matter is still pending.

Please let me know how you wish to proceed. If you would like a hearing scheduled under either 2 or 3 please include what dates you are available.

If you have questions please contact Bill or I.

Annette Bendish

Public Utility Analyst  
North Dakota Public Service Commission  
600 E Boulevard Ave, Dept. 408  
Bismarck, ND 58505-0480  
701-328-2421  
fax: 701-328-2410  
TDD: 800-366-6888  
[abendish@state.nd.us](mailto:abendish@state.nd.us)