

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

Capital Electric Cooperative, Inc.)
)
 Plaintiff,)
)
 vs.)
)
 The City of Bismarck, North Dakota)
)
 and)
)
 Montana-Dakota Utilities, Inc., a)
 Division of MDU Resources Group,)
 Inc.)
)
 and)
)
 The Public Service Commission of)
 North Dakota)
)
 Defendants.)

**BRIEF IN SUPPORT OF PLAINTIFF'S
MOTION FOR LEAVE OF COURT TO
AMEND COMPLAINT**

Docket Number 05-C-2303

Plaintiff, seeks to amend its Complaint to answering Defendant's, MDU and PSC, in response to the City of Bismarck's Motion for More Definite Statement. Granting leave to amend the Complaint will not prejudice answering Defendants as these Defendants were named in the action, not as wrongful actors, but as persons whose rights might be affected by declaratory relief. The pleadings are not closed, a Motion is pending for More Definite Statement, discovery has not been concluded, nor has a trial date been set. No answering Defendant will be prejudiced in any manner by allowing Plaintiff to amend its Complaint.

Therefore, Plaintiff respectfully requests the Court to grant Plaintiff leave to amend its Complaint against answering Defendants.

Dated this 3rd day of February, 2006.

PRINGLE & HERIGSTAD, P.C.

By: Carol K. Larson

Carol K. Larson - #04406

Attorneys for Capital Electric Cooperative, Inc.

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(701) 852-0381

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The City of Bismarck, North Dakota)

and)

Montana-Dakota Utilities, Inc., a)

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Inc.)

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The Public Service Commission of)

North Dakota)

Defendants.)

**AFFIDAVIT OF SERVICE BY
UNITED STATES MAIL**

Docket Number 05-C-2303

STATE OF NORTH DAKOTA)

) ss.

COUNTY OF WARD)

LaRae A. Thomas, being first duly sworn, deposes and says:

That she is a citizen of the United States of America, of legal age, and is not a party to nor interested in the above entitled action; that on the 3rd day of February, 2006, this Affiant served by depositing in the mailing department of the United States Post Office at Minot, North Dakota, a sealed envelope with postage thereon duly prepaid, containing a true and correct copy of the following documents in the above entitled action:

1. Amended Complaint and Notice to Appeal, with attached Affidavit of Service by Mail (City);
2. Notice of Motion and Motion for Leave of Court to Amend Complaint; and

3. Brief in Support of Motion for Leave of Court to Amend Complaint.

That said envelopes were addressed to the following person at his known address as follows:

Jerome C. Kettleon
Attorney at Law
PO Box 400
Bismarck, ND 58502-0400

William W. Binek
PUBLIC SERVICE COMMISSION
600 E Boulevard Avenue, Department 408
Bismarck, ND 58505-0480

Randall J. Bakke
Smith Bakke Porsborg & Schweigert
116 North 2nd Street
PO Box 460
Bismarck, ND 58502-0460

That the above provisions were duly mailed in accordance with the provisions of the North Dakota Rules of Civil Procedure.

LaRae A. Thomas
LaRae A. Thomas

SUBSCRIBED AND SWORN to before me this 3 day of February, 2006.

Ruth Headrick
Notary Public
For the State of North Dakota
My Commission expires: 10-25-11

RUTH HEADRICK
Notary Public
State of North Dakota
My Commission Expires Oct. 25, 2011