

116 North 2nd Street
Bismarck, ND 58501

February 8, 2006

P.O. Box 460
Bismarck, ND 58502-0460
Phone (701) 258-0630
Fax (701) 258-6498

William W. Binek
Public Service Commission
State Capitol
Bismarck, ND 58505-0480

Re: Capital Electric Cooperative, Inc. v. City of Bismarck, et al

Dear Mr. Binek:

Enclosed please find a copy of my recent letter dated February 6, 2006, to Judge Haskell in the above-referenced matter. It came to my attention today that you were not provided a copy of this letter when it was sent out. This was an inadvertent error on our part and I extend my apologies for any inconvenience this may have caused and assure you that you will be copied with all further correspondence to the court on this matter.

Very truly yours,

Randall J. Bakke

RJB/jm
Encl.
Binek.1

Sheldon A. Smith*
Randall J. Bakke***
Scott K. Porsborg***
Suzanne M. Schweigert*
Shawn A. Grinolds**
Mitchell D. Armstrong**
David R. Phillips*

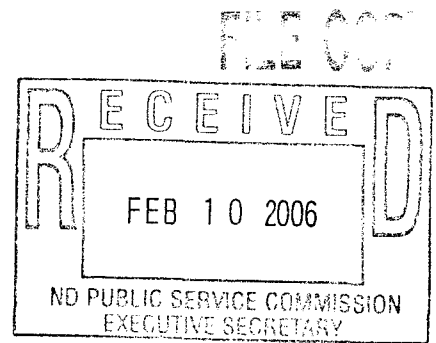
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February 6, 2006



116 North 2nd Street
Bismarck, ND 58501

The Honorable Bruce B. Haskell
Judge of the District Court
P.O. Box 1013
Bismarck, ND 58502-1013

Re: Capital Electric Cooperative, Inc. v. City of Bismarck, et al
Civil No: 05-C-2303

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Dear Judge Haskell:

On behalf of defendant City of Bismarck, this letter shall advise of the City's position in regards to the March 2, 2006 hearing. Please be advised the City agrees and has no objection to the Court's proposed procedure to treat Capital Electric's complaint as an appeal to the district court of the City's decision in regards to the Capital Electric franchise. Similarly, the City has no objection to permitting Capital Electric an opportunity to file an additional brief in advance of the hearing. The City respectfully requests that it also be allowed to submit a reply brief to any brief submitted by Capital Electric in advance of the hearing.

We have also received Ms. Larson's February 1, 2006 letter to the Court in which she asserts the parties are entitled to a ruling on the motion for more definite statement. The City's position is there is no need for the Court to rule on Capital Electric's motion for more definite statement in light of the findings by the Court in its Memorandum Opinion and Order dated January 30, 2006. However, the City would have no objection to Capital Electric serving and filing an amended complaint. However, it is the City's position there has been a waiver by Capital Electric which rebuts some of the claims outlined in Capital Electric's proposed amended complaint. By agreeing to allow Capital Electric to amend its complaint, the City is not acquiescing or withdrawing its waiver defense nor any other defenses or claims.

On behalf of the City, we shall appear at the March 2, 2006 hearing, unless the Court instructs us otherwise. Thank you for your consideration regarding this matter.

Very truly yours,


Randall J. Bakke

Sheldon A. Smith*
Randall J. Bakke***
Scott K. Porsborg***
Suzanne M. Schweigert*
Shawn A. Grinolds**
Mitchell D. Armstrong**
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