



February 9, 2006

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Carol K. Larson
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Via Facsimile and U.S. Mail

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

Dear Ms. Larson:

We are in receipt of plaintiff's Amended Complaint and Notice of Appeal. We note that that document was executed and served by you on February 3, 2006, which is the same date of your motion to the court requesting leave to file an amended complaint. Our understanding is that the court has not yet ruled on plaintiff's request to amend its complaint even though language in the court's memorandum opinion dated January 30, 2006 makes it appear likely the court will grant the plaintiff's request to serve an amended complaint. Similarly, we have advised the court that we do not object to plaintiff filing an amended complaint. However, plaintiff's request to amend this complaint has not yet been ruled upon by the court.

Further, the City relies on its motion for dismissal in response to plaintiff's initial complaint and plaintiff's amended complaint. In other words, we believe the City would only be obligated to provide an answer to the amended complaint in the event the court denies the City's motion for dismissal. Further, once Capital Electric has filed a supplemental brief as permitted by the court's memorandum opinion, the City will respond to plaintiff's supplemental brief prior to the March 2, 2006 hearing.

In summary, because the City relies upon its previous motion for dismissal as its response to both plaintiff's original complaint, and amended complaint and notice of appeal, and because the court has not yet formally permitted Capital Electric to serve an amended complaint, we do not believe any answer to the amended complaint by the City is necessary or required. ~~The City shall, however, respond to the allegations in Capital Electric's amended complaint and notice of appeal in the City's supplemental brief and at the hearing before the court on March 2, 2006.~~

Sheldon A. Smith*

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Thank you for your consideration regarding this matter.

Very truly yours,


Randall J. Bakke

RJB/jm

pc: William Binek (by mail)
Daniel Kuntz (by mail)
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