

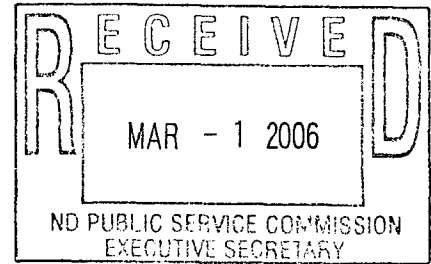
State of North Dakota
County of Burleigh

In District Court
South Central Judicial District

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

**Brief of Montana-Dakota Utilities Co.
in Response to Plaintiff's Motion for
Continuance**

Case No. 05-C-2303



Montana-Dakota Utilities Co. ("Montana-Dakota") submits the following brief in response to the motion of Capital Electric Cooperative, Inc. ("CEC") dated March 1, 2006 requesting continuance of the hearing scheduled for March 2, 2006.

Montana-Dakota objects to the plaintiff's motion for a continuance of the hearing scheduled in this matter for March 2, 2006. Montana-Dakota would be prejudiced by such a continuance because Capital Electric continues to provide electric distribution services in the City of Bismarck to subdivisions for which it does not have a franchise based on the November 14 order of the Bismarck Board of City Commissioners. In addition, Montana-Dakota has reason to believe that Capital Electric intends to extend service to new customers within these and other areas annexed by the City of Bismarck during the pendency of this proceeding.

Capital argues that it needs a continuance because it just recently received the record of the City proceeding and the transcript of the Public Service Commission hearing, and because it intends to conduct discovery and supplement the record of the

City Commission. Capital's arguments are without merit. Capital was a party to the City Commission proceeding and has had possession or access to the entire record of the City Commission proceeding without waiting for the copy of the record filed by the City with the Court. The record of the City Commission is complete and Capital is not entitled to supplement that record or conduct discovery for the purpose of supplementing the record. The scope of the Court's review, whether as an appeal or declaratory judgment action, is limited as noted in the Court's order of January 30, 2006. The record of the Public Service Commission hearing is entirely irrelevant to the Court's review of the City Commission's decision of November 14, 2006.

Montana-Dakota requests that CEC's motion for reconsideration be denied. Montana-Dakota intends to appear in person at the hearing of March 2, 2006.

Dated this 1st day of March, 2006.

Respectfully submitted,
Montana-Dakota Utilities Co., a Division of
MDU Resources Group, Inc.

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