

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

Capital Electric Cooperative, Inc., )

Plaintiff, )

v )

The City of Bismarck, North Dakota, )

and )

Montana-Dakota Utilities, Inc., a )

Division of MDU Resources Group, )

Inc., )

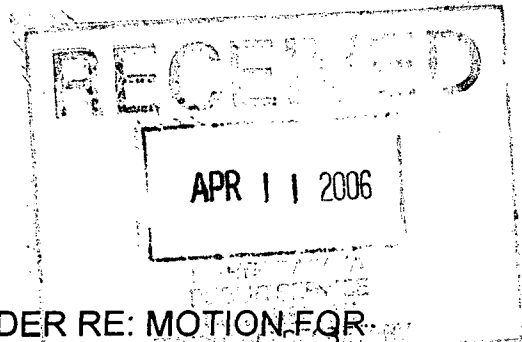
and )

The Public Service Commission of )

North Dakota, )

Defendants. )

..... )



ORDER RE: MOTION FOR RECONSIDERATION

Case No. 05-C-2303

The Court hereby DENIES the Capital Electric Cooperative's (Capital) Motion for Reconsideration. Capital specified several grounds for reconsideration that will be discussed in the order set out in the Motion.

As a preliminary matter, the Court notes that there is nothing in the North Dakota Rules of Civil Procedure that provides for "reconsideration."

1. Capital argues that "[T]here is no 'appeal provided' or 'proscribed by law' for Capital to obtain judicial review of the November 14<sup>th</sup> Order by Appeal." N.D.C.C. §27-05-06(4) clearly provides for appeals to the district court of "determinations of inferior officers, boards, or tribunals . . ." Capital further argues that the availability of one remedy does not preclude a party from seeking another remedy, in this case, a declaratory judgment. While true, the fact is that,

regardless of how Capital attempts to characterize its Complaint, Capital is not seeking a declaratory judgment. A declaratory judgment is a "declaration of rights, status, or other legal relations" under a statute, municipal ordinance, contract or franchise. Capital in fact wants the Court to "declare" that the City had no jurisdiction to hear MDU's petition, and that the City's decision was wrong.

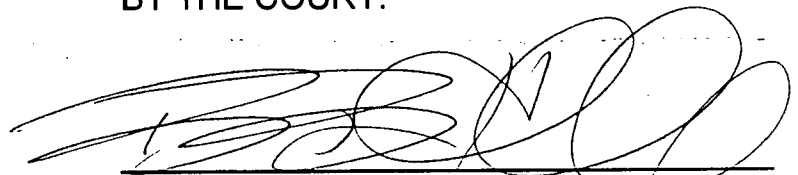
2. Capital argues that the Court issued a summary judgment without the defendants providing Capital proper notice, and without the Court allowing Capital the time for response contained in Rule 12 and 56, N.D.R.Civ.P. The Court did not issue a summary judgment.

3. Capital states that, "without reference to the material considered by the City Commission" the Court concluded that "CEC failed to plead that the City had no authority to hear the Petition and issue its Order." The Complaint filed by Capital contained no challenge to the City's authority to hear MDU's Petition. That was the extent of the Court's reference to Capital's failure to challenge to City's jurisdiction, and was accurate.

4. The Court GRANTS Capital's Motion to Amend Complaint, although the Motion has become largely moot because of the Court's ruling on Capital's appeal.

Dated at Bismarck, North Dakota, this 10<sup>th</sup> day of April, 2006.

BY THE COURT:



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Bruce B. Haskell, District Judge  
South Central Judicial District

Carol Larson  
Daniel Kuntz  
Randall Bakke  
William Binek  
Jerome Kettleson