

**STATE OF NORTH DAKOTA**  
**COUNTY OF BURLEIGH**

**IN DISTRICT COURT**  
**SOUTH CENTRAL JUDICIAL DISTRICT**

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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. )  

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**CIVIL NO. 05-C-2303**

**ANSWER TO AMENDED COMPLAINT**

The North Dakota Public Service Commission (“Commission”), for its Answer to the Amended Complaint of Capital Electric Cooperative, Inc. (“Capital Electric”) alleges and states as follows:

1. The Amended Complaint fails to state a claim against the Defendant upon which relief can be granted. The Defendant Commission answers the Amended Complaint, but because there are no claims against this answering Defendant, the Commission informs the Court that it does not anticipate that it will actively participate in the legal proceedings before the Court.
2. The Commission admits the allegations contained in paragraphs I, II, III and IV of the Amended Complaint.

3. The Commission is without sufficient information to admit or deny the allegations contained in paragraphs V and VI of the Amended Complaint and therefore denies the same and puts the Complainant to its proof therein.

4. The Commission admits the allegations contained in paragraphs VII and VIII of the Amended Complaint.

5. The Commission, upon information and belief, admits the allegations contained in paragraphs IX and X of the Amended Complaint.

6. The Commission admits the allegations contained in paragraphs XI and XII of the Amended Complaint.

7. The Commission admits that portion of the allegations contained in Paragraph XIII of the Amended Complaint that the Board of City Commissioners stated as one of its "Conclusions of Law" in its November 14, 2005 Order "That pursuant to Article 7, Section 11 of the North Dakota Constitution the City of Bismarck has the power to regulate the franchises of any public utility within the City." The remaining allegations are opinions and legal conclusions expressed by Capital Electric that require no response.

8. The Commission admits that portion of the allegations contained in Paragraph XIV of the Amended Complaint that the Board of Commissioners of the City of Bismarck performs the legislative functions of the city. The remaining allegations are opinions and legal conclusions expressed by Capital Electric that require no response.

9. The Commission is without sufficient information to admit or deny the allegations contained in paragraphs XV, XVI, XVII, XVIII, XIX and XX of the Amended Complaint and therefore denies the same and puts the Complainant to its proof therein. Furthermore, the allegations contain opinions and legal conclusions expressed by Capital Electric that require no response.

10. The allegations contained in Paragraph XXI of the Amended Complaint require no response.

11. The Commission is without sufficient information to admit or deny the allegations contained in paragraphs XXII, XXIII, XXIV, XXV, XXVI, XXVII and XXVIII of the Amended Complaint and therefore denies the same and puts the Complainant to its proof therein. Furthermore, the allegations contain opinions and legal conclusions expressed by Capital Electric that require no response.

12. The Commission admits the allegations contained in paragraph XXIX of the Amended Complaint that it is a constitutional body under Article V, Section 2 of the North Dakota Constitution, and that it has only such powers and duties as are prescribed by law, not including powers to determine rights, status, or other legal relations affected by a municipal ordinance, contract or franchise, but denies that it lacks jurisdiction to determine rights, status, or other legal relations affected by a statute. Capital Electric in fact alleges in paragraph VIII of the Amended Complaint that it has filed a Complaint with the Commission requesting relief under specific statutes.

13. The Commission admits that portion of the allegations contained in Paragraph XXX of the Amended Complaint that relate to the judicial power and original jurisdiction of the district court. The remaining allegations are legal conclusions expressed by Capital Electric that require no response.

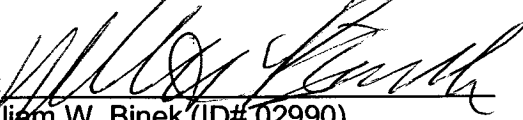
14. The Commission, upon information and belief, admits the allegations contained in Paragraph XXXI of the Amended Complaint.

15. The Commission is without sufficient information to admit or deny the allegations contained in Paragraphs XXXII and XXXIII of the Amended Complaint and therefore denies the same and puts the Complainant to its proof therein.

Therefore, the Commission requests that the Court issue an order dismissing the Amended Complaint of Capital Electric against the Commission.

Dated this 18th day of April, 2006.

Respectfully Submitted,  
North Dakota Public Service Commission

By: 

William W. Binek (ID# 02990)

Chief Counsel

Public Service Commission

600 E. Boulevard Avenue, Dept 408

Bismarck, ND 58505

(701)328-4088