

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

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.)

**PLAINTIFF'S BRIEF ON DEFENDANT
MDU'S MOTION FOR DISMISSAL
OF AMENDED COMPLAINT**

Docket Number 05-C-2303

Capital Electric Cooperative, Inc. (Capital) resists the May 8, 2006, motion of Montana-Dakota Utilities, Co., requesting dismissal of Capital's Amended Complaint and Notice of Appeal.

MDU's brief in support of its motion states the purpose of the motion is to permit the entry of judgment based on orders already entered in this case and "There are no claims for relief in the Amended Complaint not already decided by the Court." MDU's brief erroneously asserts only two issues were raised by the Amended Complaint, "(1) whether the plaintiff should have declaratory relief . . . and (2) whether the City Commission Findings, Conclusions Decision and Order, dated November 14, 2005, was arbitrary,

capricious and unreasonable. . . ." (MDU brief pages 2 and 3).

Capital's original complaint, its amended complaint filed in response to The City of Bismarck's motion for a more definite statement, its alternative notice of appeal in response to the Court's January 30, 2006, Order to treat the complaint as an appeal, and its briefs to the Court all raised many more issues than the two issues identified by MDU's motion. Capital does not waive or abandon any issues, whether or not acknowledged by MDU's brief, and relies upon and incorporates herein all of Capital's prior filings in this case, including but not limited to, its Response to Motion to Dismiss or for more Definite Statement dated January 6, 2006; Response to Reply Briefs dated January 18, 2006; letter to Court dated February 1, 2006; Motion for Leave of Court to Amend Complaint and brief dated February 3, 2006; Motion for Reconsideration and brief dated February 22, 2006; Supplemental Brief dated February 28, 2006; Motion for Continuance and Scheduling Order and brief dated March 1, 2006; and Amended Complaint dated April 24, 2006.

Dated this 19 day of May, 2006.

PRINGLE & HERIGSTAD, P.C.

By: 

Carol K. Larson - #04406

Attorneys for Capital Electric Cooperative, Inc.

Pringle & Herigstad, P.C.

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and)

The Public Service Commission of)

North Dakota)

Defendants.)

**AFFIDAVIT OF SERVICE BY
UNITED STATES MAIL**

Docket Number 05-C-2303

STATE OF NORTH DAKOTA)

) ss.

COUNTY OF WARD)

LaRae A. Thomas, being first duly sworn, deposes and says:

That she is a citizen of the United States of America, of legal age, and is not a party to nor interested in the above entitled action; that on the 19th day of May, 2006, this Affiant served by depositing in the mailing department of the United States Post Office at Minot, North Dakota, a sealed envelope with postage thereon duly prepaid, containing a true and correct copy of the following documents in the above entitled action:

- 1. Plaintiff's Brief on Defendant MDU's Motion for Dismissal of Amended Complaint.**

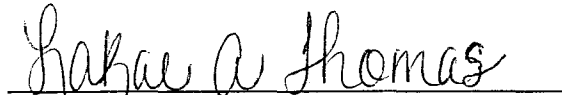
That said envelopes were addressed to the following persons at their known address as follows:

Jerome C. Kettleson
Attorney at Law
PO Box 400
Bismarck, ND 58502-0400

William W. Binek
PUBLIC SERVICE COMMISSION
600 E Boulevard Avenue, Department 408
Bismarck, ND 58505-0480

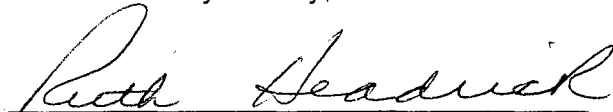
Randall J. Bakke
Smith Bakke Porsborg & Schweigert
PO Box 460
Bismarck, ND 58502-0460

That the above provisions were duly mailed in accordance with the provisions of the North Dakota Rules of Civil Procedure.


LaRae A. Thomas

SUBSCRIBED AND SWORN to before me this 19th day of May, 2006.

RUTH HEADRICK
Notary Public
State of North Dakota
My Commission Expires Oct. 25, 2011


Notary Public
For the State of North Dakota
My Commission expires: 10-25-11

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ROGER O. HERIGSTAD
(1919-2003)

May 19, 2006

CLERK OF DISTRICT COURT
BURLEIGH COUNTY COURTHOUSE
PO BOX 1013
BISMARCK, ND 58502-1013

**CAPITAL ELECTRIC COOPERATIVE, INC. vs. THE CITY OF BISMARCK, and
MONTANA-DAKOTA UTILITIES, INC., A DIVISION OF MDU RESOURCES
GROUP, INC., and THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA**

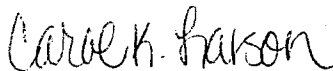
DOCKET NUMBER 05-C-2303

Enclosed for filing in connection with the above referenced matter are the following documents:

1. Plaintiff's Brief on Defendant MDU's Motion for Dismissal of Amended Complaint; and
2. Affidavit of Service by Mail.

If you have any questions on the enclosed, please do not hesitate to contact me.

Yours truly,



Carol K. Larson

lat

Enclosures

cc w/ encl: Jerome C. Kettleson
William W. Binek
Randall J. Bakke