

Binek, William W.

From: John W. Breen Jr. [jwbreen2@bis.midco.net]
Sent: Thursday, April 19, 2007 4:00 PM
To: Wahl, Al; 'Bruce Gerhardson'; 'Daniel S. Kuntz'; Binek, William W.
Subject: RE: Otter Tail Corporation and Montana Dakota Utilities Co. Advance Determination of Prudence Applications

Attorney Al Wahl,

The Motion to recuse Attorney Binek is withdrawn.

May we address the issues raised in the Motion in Limine before we start to address the motions on discovery as that may shorten the discovery issues.

I thank you.

John W. Breen 4-19-2003

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 E-mail from J. Breen re: withdrawal of Motion to
 Recuse Attorney Binek
 Public Service Commission

From: Wahl, Al [mailto:awahl@nd.gov]
Sent: Thursday, April 19, 2007 2:59 PM
To: Bruce Gerhardson; Daniel S. Kuntz; John W. Breen Jr.; Binek, William W.
Subject: Otter Tail Corporation and Montana Dakota Utilities Co. Advance Determination of Prudence Applications

Counsel, let's do a prehearing conference for the captioned hearings on Tuesday, April 24, beginning at 9:00 a.m., at the Commission's hearing room. I would think that the morning will be sufficient. Please confirm your attendance by e-mail.

I expect to e-mail a notice (which will include an agenda) tomorrow. If you have anything for the agenda other than the pending motions, please let me have your advice as soon as you can, and otherwise an e-mail to counsel and me is sufficient. (In any event, as I think I said, the agenda will remain open.)

Mr. Breen, I'm not sure what you have in mind with a "Motion to Recuse Attorney Binek," but I rather think that your motion has to be to disqualify Mr. Binek as counsel for the Commission under one or another of the North Dakota Rules of Professional Conduct. If that is the case, I expect that you will point to the applicable rule or rules and have case law to support your contention. I will expect that any factual allegation will be supported by affidavit. I will expect a brief. Mr. Binek is entitled to a reasonable time to respond, and I would think that is something more than five days counting a weekend. I cannot imagine how I can take up such a motion at a prehearing conference on Tuesday next, but you should advise me and otherwise make your record as you wish.

Further, Mr. Breen, I understand the day is short, but I'm not inclined to arbitrarily and informally shorten the time to respond to any discovery. You need to make a motion accordingly. Nonetheless, I do expect that at the prehearing conference we will all attempt in

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good faith to resolve any discovery issues.

I also hope, counsel, that I will have a letter to you tomorrow (by e-mail, of course) with the questions I think need to be addressed for my consideration of the motions. In any event I will do that just as soon as I can.

Please do not hesitate to communicate with me as you may think helpful to facilitate these hearings. Regards, Al Wahl.