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May 6, 2011

**RECEIVED**

*Hand Delivery*

MAY 09 2011

Honorable Donald L. Jorgensen  
Judge of the District Court  
514 East Thayer Avenue  
Bismarck, ND 58502-1013

**PUBLIC SERVICE COMMISSION**

Dear Judge Jorgensen:

In re: Civil No. 08-10-C-02329  
Dakota Resource Council v. ND Public Service Commission, et al.

We are writing on behalf of our client, Falkirk Mining Company, which is one of the appellees in the captioned matter.

On May 3, 2011, we received the Reply Brief of Appellant Dakota Resource Council, dated May 2, 2011. We are writing with respect to the propriety of filing a reply brief by the Dakota Resource Council.

Attached hereto is the Order Extending Briefing Deadlines dated February 1, 2011, which your Honor executed, indicating that the Appellant's Brief will be submitted on or before April 1, 2011, and that Appellees' briefs will be served and filed within 20 days after service of Appellant's Brief. There is no mention made in this Order of a reply brief. This order was drafted by counsel for the Dakota Resource Council, thus had the Dakota Resource Council desired a reply brief, it should have included it within the order.

We further note that Rule 9.1 of the North Dakota Rules of Court dealing with administrative appeals provides in part that "the Court shall fix a time for filing briefs." As no such time was fixed by this Court for a reply brief, we believe that the reply brief of the Dakota Resource Council should be disallowed.

**81 RC-08-640** Filed: 5/9/2011 Pages: 3  
**APPEAL - Letter to Judge Jorgensen re not considering DRC's reply brief**

BILLINGS BISMARCK BOZEMAN HELENA KALISPELL

Falkirk Mining Company

Brian Bjella, Crowley Fleck, PLLP

Very truly yours,

A handwritten signature in black ink, appearing to read "B. R. Bjella", written over a horizontal line.

BRIAN R. BJELLA

bw

Enc.

cc: *Hand Delivery:*  
Debra Simenson, Clerk of District Court  
*via mail:*  
Derrick Braaten  
Mark Gruman  
Zachary Smith  
Ladd Erickson

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

Dakota Resource Council, )

Civil No. 08-10-C-02329

Appellant, )

Agency Case No. RC-08-640

vs. )

OAH File No. 2010-0122

North Dakota Public Service Commission, )

**[PROPOSED] ORDER EXTENDING  
BRIEFING DEADLINES**

McLean County, North Dakota )

Department of Transportation, and North )

Dakota Game and Fish Department and )

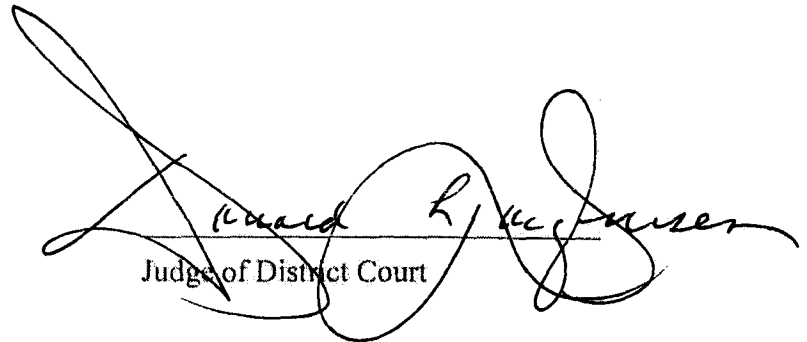
Falkirk Mining Company, )

Appellees. )

Having received the Stipulation to Extend Briefing Deadlines filed by all parties to the above-captioned appeal,

THIS COURT HEREBY ORDERS that Appellant's Brief in the above-captioned matter will be submitted on or before April 1, 2011, and the Appellees' briefs will be served and filed within 20 days after service of Appellant's brief.

Dated this 15<sup>th</sup> day of February, 2011.

  
Judge of District Court