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E-file to Court – Reply in Support of Statement of Costs and Expenses

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STATE OF NORTH DAKOTA
COUNTY OF GRAND FORKS

IN DISTRICT COURT
NORTHEAST JUDICIAL DISTRICT

CIVIL NO. 18-2015-cv-00240

Public Service Commission,)
)
 Petitioner,)
)
 vs.)
)
 Grand Forks Bean Company, Inc., and)
 Auto-Owners Insurance Company)
)
 Respondents.)

**PUBLIC SERVICE COMMISSION'S
REPLY IN SUPPORT OF ITS
STATEMENT OF COSTS AND
EXPENSES**

I. INTRODUCTION

[¶1] Bremer Bank and Auto-Owners have filed objections to the PSC's statement of costs. The following is the PSC's reply in support of its statement of costs.

II. ARGUMENT

[¶2] In Bremer's objection, it restates arguments that were previously made in the closing briefs in this case. The Court has already ruled on this issue and the PSC re-alleges the arguments from its closing brief at ¶¶ 32-36. Doc. ID # 253. The statutes explicitly allow and provide for the recovery of the PSC's costs and expenses, including outside legal services.

[¶3] Auto-Owners contests the reasonableness of the rates paid to outside counsel and the total amount of time. Auto-Owners claims the fee rate is excessive based on what the Attorney General's office charges for services provided to state agencies. This is comparing apples to oranges, and ignores the applicable law. Section 60-04-10, N.D.C.C., specifically recognizes that the attorney general may employ outside legal services to assist the PSC in this type of case and

may deduct the expenses from the trust fund. Accordingly, Auto-Owners' argument is irrelevant and ignores that the appointment of counsel was from the Attorney General's office.

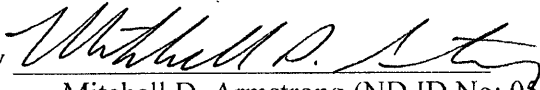
[¶4] Regardless, filed herewith is the Affidavit of Sue Richter which discusses the process the PSC went through to retain counsel for this case. As indicated, the PSC contacted the Attorney General's office for representation. *Affidavit of Susan K. Richter* at ¶ 2 (May 24, 2016) ("*Richter Aff.*"). Further, the PSC contacted several other law firms to obtain counsel. *Id.* at ¶ 3. Given the circumstances described in Ms. Richter's affidavit, the hourly rate charged for this case is not excessive, and was the lowest of any other private attorneys contacted by the PSC. *Id.*

[¶5] Auto-Owners also conclusively asserts the issues in this case were not complex, and therefore, the time spent was excessive. The Court is aware of the issues litigated, and complexity is not particularly quantifiable. However, the PSC asserts this has not been a "simple" case as there were numerous legal and factual issues involved. This was known and considered at the time the PSC was seeking to retain counsel. *Id.* at ¶¶ 5-6. The Court and parties have been provided with all of outside counsel's bills. Yet, Auto-Owners has not identified what items it claims outside counsel performed that were excessive, unnecessary, or otherwise unreasonable even though all work performed is detailed in the documents filed. Given the information provided, the Court can evaluate the legal expenses and time spent for reasonableness. See State Farm v. Sigman, 508 N.W.2d 323, 327 (N.D. 1993) (the trial court is considered an expert in determining the amount of attorney fees and can consider the time and labor required; the novelty and difficulty of the questions involved; the skill required to properly perform the legal services; the customary fee; and the result obtained). The PSC asserts the time spent was reasonable.

III. CONCLUSION

[¶6] The PSC requests its costs and expenses, including those of outside counsel be approved.

Dated this 26th day of May, 2016.

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