

**IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

Nodak Electric Cooperative, Inc.,
Appellant and Cross-Appellee,
vs.
North Dakota Public Service Commission, and
City of Drayton,
Appellees and Cross-Appellees,
and
Otter Tail Power Company,
Appellee and Cross-Appellant.

Supreme Court No. 20220122
Civil No. 08-2021-CV-01508

ON APPEAL FROM THE JUDGMENT DATED MARCH 3, 2022,
BURLEIGH COUNTY DISTRICT COURT,
SOUTH CENTRAL JUDICIAL DISTRICT
HONORABLE DOUGLAS A. BAHR

**CROSS-APPELLEE CITY OF DRAYTON'S
MOTION FOR EXTENSION OF TIME**

Pursuant to Rule 26(b) of the North Dakota Rules of Appellate Procedure, Cross-Appellee City of Drayton moves for an extension of the deadline to file its Cross-Appellee Brief. Rule 26(b) provides: "For good cause, the court may extend the time prescribed by these rules or by its order to perform any act, or may permit an act to be done after that time expires."


Good cause exists to extend the time for the City of Drayton to file its Cross-Appellee Brief. The City of Drayton is identified as both an appellee and cross-appellee in the caption of this action. However, on appeal, the City of Drayton is only responding to Otter Tail Power Company's ("Otter Tail") cross-appeal on the jurisdictional issue regarding the City of Drayton's constitutional franchise rights. Otter Tail's Cross-Appellant brief was filed on August 26, 2022. Reviewing Rules 28 and 31 of the North Dakota Rules of Appellate Procedure, and because the

City of Drayton could not respond to the issues raised by Otter Tail's Cross-Appellant Brief until it was filed, the City of Drayton reasonably believed it had fourteen days to file its response, similar to the deadline for Cross-Appellee Nodak Electric. The City of Drayton filed its Cross-Appellee Brief on September 8th, within the fourteen-day deadline. The City of Drayton has since learned that the Court is asserting the City's Cross-Appellee Brief was due the same day Otter Tail filed its Cross-Appellant Brief on August 26, 2022. Considering the circumstances and unique timing presented in this cross-appeal, good cause exists for an extension to allow the City of Drayton to file its Cross-Appellee Brief responding to the issues raised in Otter Tail's Cross-Appeal. If the City's motion for extension is granted, the Court can either accept the City's prior filing of its Cross-Appellee Brief or the City can refile its brief following the order. Granting the City's Motion should not impact Otter Tail's reply under N.D.R.App.P 28(i)(3). Allowing this extension for filing of the City of Drayton's Cross-Appellee Brief would not be unduly prejudicial to Nodak Electric, the North Dakota Public Service Commission, or Otter Tail Power Company. However, denying the City's motion would significantly prejudice the City of Drayton's right to participate in this appeal on an important constitutional issue.

The City of Drayton respectfully requests the Court grant its Motion for Extension of Time extending the deadline to file its Cross-Appellee Response Brief.

Dated this ____ day of 9/12/2022, 9/12/2022.

STEVEN C. EKMAN, PC
Attorney for Cross-Appellee City of Drayton
910 Hill Ave.
Grafton, ND 58237-0070
Telephone: 701-352-0916
Steven@ekman.com

By: 

Steven C. Ekman (ID# 04983)

