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September 13, 2012

Mr. John Zitnik
964 South 199th Court
Omaha, NE 68154

Re: *File No. 12-R-128; OPPD; Zitnik*

Dear Mr. Zitnik:

This letter is in response to your correspondence dated August 24, 2012, regarding access to records of the Omaha Public Power District ("OPPD") under the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2008, Cum. Supp. 2010, Supp. 2011). We received your correspondence on August 29, 2012, and we considered that correspondence to be a petition for access to public records under § 84-712.03. Our response to your petition is set out below.

## FACTS

Our understanding of the facts in this case is based upon your letter along with the materials which you provided to us with it. We also discussed this matter several times with attorney Stephen Bruckner, counsel for OPPD.

The OPPD Board of Directors (the "Board") holds its monthly meetings at 10:00 A.M. on the first Thursday after the tenth day of each month. Those meetings usually take place at OPPD's Energy Plaza headquarters building, and are open to the public. The meeting room where the Board conducts its monthly meetings is equipped with audio recording equipment, and the Board records those meetings so that its corporate secretary has the audio recordings available as a backup to assist in the preparation of the Board's official minutes. The recording equipment used for those meetings apparently produces recordings digitally.

Sometime prior to June 11, 2012, you requested copies of the audio recordings for the Board's meetings in March and April of 2012. Mr. Bruckner responded to you in a letter dated June 11, 2012, and indicated that OPPD was willing to provide you with access to the audio recordings for the monthly meetings in question at its office at your convenience. However, because he understood from discussions with OPPD officials that the recordings at issue were produced on magnetic tapes rather than digital

equipment, Mr. Bruckner also indicated that OPPD could not provide you with copies of the audio tapes at issue because it did not have copying equipment reasonably available to the make the copies. That refusal to provide copies precipitated your public records petition to this office.

**ANALYSIS**

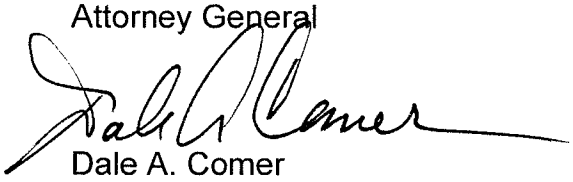
As noted above, we discussed your request for copies of the audio recordings at issue with Mr. Bruckner, and at our request, he agreed to make further inquiry with OPPD as to the precise nature of the recordings. As it turns out, the recordings are produced digitally, and it is possible for OPPD to prepare copies of them. Therefore, it is our understanding that OPPD will prepare copies of the recordings at issue and provide them to you on a CD or in some other digital format.

Since we understand that you will be provided with copies of the audio recordings which you requested, it appears that OPPD will comply with the applicable provisions of the Public Records Statutes. On that basis, there is no need for further action by this office, and we are closing this file.

If you disagree with our analysis regarding this matter, you may wish to consult with your private attorney to determine what additional remedies, if any, remain available to you under the Public Records Statutes.

Sincerely,

JON BRUNING
Attorney General



Dale A. Comer
Assistant Attorney General
Chief, Legal Services Bureau

cc. Stephen M. Bruckner

05-413-30