

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
SOUTHWEST DIVISION

_____	)	
DAKOTA RESOURCE COUNCIL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO. 1:12-CV-064
	)	
NORTH DAKOTA PUBLIC SERVICE	)	
COMMISSION,	)	
	)	
Defendant.	)	
_____	)	

**DEFENDANT NORTH DAKOTA PUBLIC SERVICE COMMISSION’S ANSWER**

Defendant North Dakota Public Service Commission (“NDPSC”), by and through undersigned counsel and pursuant to Federal Rules of Civil Procedure 8 and 12, timely files its Answer to the Plaintiff Dakota Resource Council’s (“**Plaintiff**”) Complaint served on NDPSC on July 9, 2012, and responds to the correspondingly numbered paragraphs in the Complaint as follows:

1. The allegations in Paragraph 1 are the Plaintiff’s characterization of the lawsuit and requested relief to which no response is required. The statutory and regulatory provisions cited in Paragraph 1 speak for themselves and any contrary interpretation or characterization is denied. To the extent any further response is required, NDPSC denies Plaintiff is entitled to any relief in this case.

2. NDPSC lacks information or knowledge sufficient to form a belief about the truth of the allegations in sentences 1-6 of Paragraph 2 and on that basis denies the same. The

allegations in sentences 7-10 of Paragraph 2 consist of legal conclusions to which no response is required. To the extent any further response is required, denied.

3. The allegations in sentences 1-2 of Paragraph 3 consist of legal conclusions to which no response is required. The allegations in sentence 4 of Paragraph 3 are admitted to the extent that Mr. Gruman is legal counsel for NDPSC, but denied that Mr. Gruman is NDPSC's only legal counsel. The statutory and regulatory provisions cited in Paragraph 3 speak for themselves and any contrary interpretation or characterization is denied. To the extent any further response is required, denied.

4. The allegations in Paragraph 4 consist of legal conclusions to which no response is required. Denied that Plaintiff is entitled to the relief requested in Paragraph 4 or any relief. The statutory provisions cited in Paragraph 4 speak for themselves and any contrary interpretation or characterization is denied. To the extent any further response is required, denied.

5. The allegations in sentences 1 and 4 of Paragraph 5 consist of legal conclusions to which no response is required. The allegations in sentence 2 of Paragraph 5 are admitted. NDPSC lacks information or knowledge sufficient to form a belief about the truth of the allegations in sentence 3 of Paragraph 5 and on that basis denies the same. The statutory and regulatory provisions cited in Paragraph 5 speak for themselves and any contrary interpretation or characterization is denied. To the extent any further response is required, denied.

6. Admitted NDPSC received a letter from Plaintiff dated March 26, 2012, the terms of which speak for themselves and any contrary interpretation or characterization is denied. The statutory provision cited in Paragraph 6 speaks for itself and any contrary interpretation or characterization is denied. To the extent any further response is required, denied.

7. The statutory provisions cited in Paragraph 7 speak for themselves and any contrary interpretation or characterization is denied. To the extent any further response is required, denied.

8. The statutory provisions cited in Paragraph 8 speak for themselves and any contrary interpretation or characterization is denied. To the extent any further response is required, denied.

9. The statutory and regulatory provisions cited in Paragraph 9 speak for themselves and any contrary interpretation or characterization is denied. To the extent any further response is required, denied.

10. The statutory and regulatory provisions cited in Paragraph 10 speak for themselves and any contrary interpretation or characterization is denied. To the extent any further response is required, denied.

11. Admitted that NDPSC issued certain policy memoranda referenced in the Exhibit cited in Paragraph 11, which memoranda were not attached to the Complaint, the terms of which memoranda speak for themselves and any contrary interpretation or characterization is denied. To the extent any further response is required, denied.

12. Denied.

13. Denied.

14. Denied.

15. NDPSC incorporates by reference as if set forth fully herein each response in Paragraphs 1-14 of this Answer. To the extent any further response is required, denied.

16. The allegations in Paragraph 16 consist of legal conclusions to which no response is required. The statutory and regulatory provisions cited in Paragraph 16 speak for themselves

and any contrary interpretation or characterization is denied. To the extent any further response is required, denied.

17. Denied.

18. NDPSC lacks information or knowledge sufficient to form a belief about the truth of the allegations in Paragraph 18 regarding Plaintiff's members and on that basis denies the same. The remaining allegations in Paragraph 18 consist of legal conclusions to which no response is required. To the extent any further response is required, denied.

NDPSC denies the allegations contained in the remaining unnumbered paragraphs of Plaintiff's Complaint constituting a prayer for relief to which no response is required. Denied that Plaintiff is entitled to the relief requested in the Complaint or Prayer for Relief or any relief. To the extent any further response is required, denied.

**AFFIRMATIVE DEFENSES**

Without limiting or waiving any available defenses, NDPSC asserts the following affirmative defenses:

**First Affirmative Defense**

Plaintiff has failed to state a claim upon which relief can be granted.

**Second Affirmative Defense**

The Court lacks subject matter jurisdiction over Plaintiff's lawsuit.

**Third Affirmative Defense**

Plaintiff lacks standing to bring the present lawsuit.

**Fourth Affirmative Defense**

Plaintiff failed to exhaust administrative remedies and/or the doctrine of primary jurisdiction requires remanding the issue to NDPSC.

**Fifth Affirmative Defense**

Plaintiff's claim is moot.

**Sixth Affirmative Defense**

Plaintiff's claim is not ripe for judicial review.

WHEREFORE, Defendant North Dakota Public Service Commission respectfully requests that this Court enter an order dismissing Plaintiff's lawsuit with prejudice, awarding Defendant NDPSC its litigation costs and expenses, including reasonable attorney fees, and awarding such other and further relief as the Court deems just and proper.

DATED: September 7, 2012.

Respectfully submitted,

**STATE OF NORTH DAKOTA  
WAYNE STENEHJEM  
ATTORNEY GENERAL**

/s/Paul M. Seby

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*Attorneys for the Defendant North Dakota Public  
Service Commission*

**CERTIFICATE OF SERVICE**

I hereby certify that on September 7, 2012, the foregoing Defendant North Dakota Public Service Commission's Answer was served electronically to all counsel of record through the Court's ECF System.

s/ Paul M. Seby

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