

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

DAKOTA RESOURCE COUNCIL and)
DACOTAH CHAPTER OF SIERRA CLUB)

Plaintiffs,)

v.)

SECRETARY OF THE INTERIOR SALLY)
JEWELL, in her official capacity,)

Defendant, and)

NORTH DAKOTA PUBLIC SERVICE)
COMMISSION,)

Defendant-Intervenor.)

CIVIL ACTION NO. 1:12-cv-065

DAKOTA RESOURCE COUNCIL)

Plaintiff,)

v.)

NORTH DAKOTA PUBLIC SERVICE)
COMMISSION,)

Defendant, and)

SECRETARY OF THE INTERIOR SALLY)
JEWELL, in her official capacity,)

Defendant-Intervenor.))

CIVIL ACTION NO. 1:12-cv-064

**PLAINTIFFS' OPPOSITION TO NORTH DAKOTA PUBLIC SERVICE
COMMISSION'S MOTION FOR SETTING COURSE OF ORAL ARGUMENT
AND COUNTER-MOTION**

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Plaintiff's Opposition to ND PSC's Motion for Setting Course of Oral Argument
Plains Justice
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Plaintiff's Opposition to ND PSC's Motion for Setting Course of Oral Argument
Plains Justice
Carrie La Seur, Legal Counsel

Plaintiffs Dakota Resource Council (“DRC”) and Dacotah Chapter of Sierra Club (“Sierra Club”)(together “Plaintiffs”) respectfully oppose North Dakota Public Service Commission’s (“NDPSC”) request that twenty minutes of the allotted hour of oral argument in each of the above-cited cases be allocated to Plaintiffs and forty minutes allocated to NDPSC and the Secretary of the Interior (“Secretary”)(together “Defendants”). Plaintiffs prefer that the Court direct the course of argument based on the questions and issues of greatest interest to the judge. Or, if the Court prefers, Plaintiffs propose as an alternative that the Court allocate the available time half and half, first thirty minutes to Plaintiffs, then thirty minutes to Defendants to allocate as Defendants choose, and allow Plaintiffs to reserve time to conclude the argument. In support of their motion, Plaintiffs state:

1. In its motion, NDPSC requests “twenty minutes for each party,” but in Civil Action No. 1:12-cv-065, goes on to propose twenty minutes for DRC and Sierra Club together, while arguing that NDPSC and the Secretary should *each* have twenty minutes to argue their case. This allocation of time is unfair on its face, and contrary to the only applicable rule on the subject in this jurisdiction, from the North Dakota Rules of Appellate Procedure:

(b) Time Allowed for Argument; Postponement. Regardless of the number of counsel on each side, the appellant will be allowed 30 minutes and the appellee will be allowed 20 minutes to present argument....

N.D.R.App.P. 34(b). Although appellate cases frequently attract intervenors, the rule does not contemplate unbalancing the allocation of argument time to accommodate numerous parties. Instead, the rule specifies that “regardless of the number of counsel on each side,” the time allocated to opposing sides will remain constant. Because the Court has already allocated an

hour for oral arguments, in the spirit of fairness, Plaintiffs do not object to Defendants receiving more than 20 minutes to argue their case.

2. In Civil Action 1:12-cv-064, where DRC is the only plaintiff, N.D.R.App.P. 34(b) also mitigates in favor of DRC receiving at least equal time to argue its case. If anything, the rule is an argument for granting more time to DRC, which stands in the role of the party bringing the dispute before the Court, but DRC asks for only equal time.

2. Plaintiffs' requests to open the argument and for discretion to reserve time to conclude the argument are supported by the same state rule:

(c) Order and Content of Argument. The appellant opens and may reserve time to conclude the argument....

N.D.R.App.P. 34(c).

3. Plaintiffs dispute NDPSC's assertion that "the unique, separate and specific authority that NDPSC and the Secretary of the Interior have under SMCRA" requires that Defendants should be allowed twice as long to argue their case as Plaintiffs. NDPSC cites no authority for this proposition because none exists. In its Memorandum in Support of Motion to Intervene in this case, NDPSC argued repeatedly that its intervention would not prejudice the parties, yet now NDPSC would have the court grant a disproportionate share of oral argument time to Defendants. Doc. No. 8 at 7, 10. This request, if granted, would work prejudice against Plaintiffs.

4. Plaintiffs do not dispute NDPSC's characterization of the procedural standing of its motion, but note that it was Plaintiffs' counsel that contacted the Court's chambers on July 17, 2013 to inquire about the schedule for oral argument in Civil No. 1:12-cv-065, as reflected by Ms. Linda Reis's email of the same date to counsel to the parties.

5. Plaintiffs therefore propose the following course of oral argument in Civil Action No. 1:12-cv-065:

a. Plaintiffs will be allotted thirty minutes for argument in support of their motion for summary judgment and in opposition to Defendants' motions for summary judgment.

b. Defendants will be allotted thirty minutes for argument in support of their motions for summary judgment and in opposition to Plaintiffs' motion for summary judgment.

c. Plaintiffs may reserve time to conclude their argument after Defendants' arguments.

For the reasons set forth above, DRC and Sierra Club respectfully request that the Court order the course of oral argument most useful to the judge, or the alternative proposed herein, to take place at 9:00 a.m. on August 16, 2013.

Respectfully submitted this 30th day of July, 2013.

/s/ Carrie La Seur

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CERTIFICATE OF SERVICE

I certify that on the 30th day of July, 2013, Baumstark Braaten Law Partners served copies of the attached document by CM/ECF as follows:

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