

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

Environmental Law & Policy Center and
Dakota Resource Council,

Appellants,

v.

North Dakota Public Service Commission
and Meridian Energy Group, Inc.,

Appellees.

Case No. 08-2018-CV-02937

ORDER

INTRODUCTION

[¶1] This matter is before the Court on appeal from an Order by the Public Service Commission (PSC) dismissing Appellants' Complaint for lack of subject matter jurisdiction. Appellants argue on appeal that the PSC denied them a fair hearing and did not follow the procedural requirements of the Administrative Agencies Practice Act (AAPA). Appellees argue that subject matter jurisdiction is a prerequisite to holding a hearing or allowing for discovery to be conducted.

STANDARD OF REVIEW

[¶2] This Court exercises a limited review of appeals from administrative agency decisions. *Bergum v. North Dakota Workforce Safety & Ins.*, 2009 ND 52, ¶ 8, 764 N.W.2d 178. Section 28-32-46 of the North Dakota Century Code provides that a district court shall affirm the order of an agency unless:

1. The order is not in accordance with the law.

2. The order is in violation of the constitutional rights of the appellant.
3. The provisions of this chapter have not been complied with in the proceedings before the agency.
4. The rules or procedure of the agency have not afforded the appellant a fair hearing.
5. The findings of fact made by the agency are not supported by a preponderance of the evidence.
6. The conclusions of law and order of the agency are not supported by its findings of fact.
7. The findings of fact made by the agency do not sufficiently address the evidence presented to the agency by the appellant.
8. The conclusions of law and order of the agency do not sufficiently explain the agency's rationale for not adopting any contrary recommendations by a hearing officer or an administrative law judge.

N.D.C.C. § 28-32-46.

[¶3] “If the underlying jurisdictional facts are disputed, this Court is presented with a mixed question of law and fact, and we review the question of law de novo and the district court’s findings of fact under the clearly erroneous standard of review.” *Gustafson v. Poitra*, 2018 ND 202, ¶ 6, 916 N.W.2d 804 (quoting *Fredericks v. Fredericks*, 2016 ND 234, ¶ 6, 888 N.W.2d 177).

FINDINGS OF FACT

[¶4] This Court adopts the finding of facts outlined in the September 10, 2018, Order by Administrative Law Judge Patrick Ward, adopted by the PSC, having found the facts to be accurate and thorough. (Docket No. 125)

LAW AND DECISION

[¶5] Appellants argue the PSC erred in denying them a hearing and did not comply

with the AAPA. Appellees respond the PSC lacked subject matter jurisdiction and therefore could not hold a hearing and was required to dismiss Appellant's Complaint.

[¶6] The PSC must, as a preliminary matter, have subject matter jurisdiction in order to hold a hearing. Jurisdiction is granted to the PSC under N.D.C.C. § 49-22.1-04, which requires a utility to obtain a certificate of site compatibility before beginning construction on any "plant, addition, or combination of plant and addition, designed for or capable of manufacture or refinement of fifty thousand barrels or more of liquid hydrocarbon products per day." N.D.C.C. § 49-22.1-01(6)(b).

[¶7] Appellant's Complaint alleged that Meridian Energy Group "is currently or will soon be acting in violation of North Dakota law" in constructing "a refinery with a capacity of over 50,000 barrels per day ("bpd") without obtaining a certificate of site compatibility." (Docket No. 29, Complaint).

[¶8] Meridian Energy Group moved to dismiss the Complaint for lack of subject matter jurisdiction, arguing that it only planned to build a refinery with a capacity of 49,500 bpd, below the statutory threshold. (Docket No. 58, Motion to Dismiss and Supporting Documents). William Prentice, Chairman and Chief Executive Officer for Meridian Energy Group, stated in his affidavit:

While different phases and capacities for the Davis Refinery have been contemplated in the past, Meridian is finalizing engineering and design plans for a facility that is designed for and capable of refining no more than 49,500 barrels per day (bpd), which is to be constructed in a single phase.

Id. William Prentice further stated in his affidavit, "Meridian has no current plans for any addition to or expansion of the Davis Refinery beyond the capacity of 49,500

bpd.” *Id.*

[¶9] The PSC dismissed for lacked subject matter jurisdiction based upon Meridian’s assurances that the capacity for the Davis Refinery would not exceed 50,000 bpd.

[¶10] This Court finds that dismissal of Appellants’ Complaint was appropriate and warranted. Meridian may very well have originally planned to construct a refinery capable of the manufacture or refinement of more than 50,000 bpd. However, Meridian’s current stated intention is to only construct a refinery capable of 49,500 bpd. The planned capacity is under the jurisdictional threshold requiring a certificate of site compatibility, leaving the PSC without jurisdiction, and the Complaint was properly dismissed.

[¶11] Because the PSC was without jurisdiction, it could not conduct a hearing. See N.D.C.C. § 28-32-21(c) (“parties may agree on a definite time and place for hearing with the consent of the agency having jurisdiction.”) (emphasis added).

[¶12] Furthermore, the PSC was within its discretion to deny discovery. In an adjudicative proceeding, discovery may be obtained in accordance with the North Dakota Rules of Civil Procedure. N.D.C.C. § 28-32-33. Hearing officers have discretion to control procedural matters such as discovery and admission of evidence. *Berger v. N. Dakota Dep't of Transp.*, 2011 ND 55, ¶ 7, 795 N.W.2d 707. Discovery decisions will not be reversed on appeal absent an abuse of discretion. *Martin v. Trinity Hosp.*, 2008 ND 176, ¶ 17, 755 N.W.2d 900.

[¶13] The PSC did not abuse its discretion in denying discovery. Appellants did not

identify what information or evidence sought would defeat a motion to dismiss for lack of subject matter jurisdiction. No amount of discovery could have affected the PSC's decision. The PSC lacked subject matter jurisdiction, and as a result, was well within its discretion to deny discovery.


CONCLUSION

[¶14] Based on the foregoing, the decision by the PSC dismissing Appellants' Complaint for lack of subject matter jurisdiction is **HEREBY AFFIRMED.**

IT IS SO ORDERED.

Dated this 14 day of May, 2019.

BY THE COURT:


Bruce A. Romanick, District Judge
South Central Judicial District