

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Keith and Deanna Kessler
v. Minnesota Power, a division of ALLETE, Inc.
Complaint**

Case No. PU-20-194

ORDER ON MOTION FOR PARTIAL DISMISSAL

September 23, 2020

Preliminary Statement

On April 23, 2020, the North Dakota Public Service Commission (Commission) received the initial complaint from the Keith and Deanna Kessler (Kesslers).

On April 27, 2020, a revised complaint of the Kesslers was received.

On May 20, 2020, the Commission received the response to the complaint by Minnesota Power, a division of ALLETE, Inc. (ALLETE).

On May 27, 2020, the Commission found the Kesslers' revised complaint states a prima facie case.

On June 29, 2020, based upon discussion during a pre-hearing conference, the Kesslers filed a Second Revised Complaint.

On July 20, 2020, ALLETE filed an Answer to the Second Revised Complaint, Brief in Support, and a Motion for Partial Dismissal.

On August 3, 2020, the Kesslers filed a Reply Brief in response to the Motion for Partial Dismissal of the Second Revised Complaint.

On August 10, 2020, ALLETE filed a reply brief in support of their Motion for Partial Dismissal of Revised Complaint.

On September 3, 2020, the Commission held a work session to discuss the Motion for Partial Dismissal.

Discussion

In its Motion for Partial Dismissal, ALLETE requested the commission dismiss the following claims for relief identified by the Kesslers as outside the scope of authority of the Commission:

1. Have the [Commission] conduct a survey of other landowners to determine if Minnesota Power has a pattern of misconduct relating to North Dakota landowners (Complaint, ¶ 22, subpart 6);
2. Prohibit Minnesota Power from any further operations in North Dakota (Complaint, ¶ 22, subpart 7);
3. Reimbursement for damages incurred for damage to Section 15, devaluation of Section 15, as well as personal damages for inconvenience, nuisance, and emotional distress (Complaint, ¶ 22, subpart 8); and
4. Order Minnesota Power to reimburse all attorney fees incurred by the Kesslers relating to the prosecution of this action (Revised Complaint, ¶ 22, subpart 9).

In response to the Motion for Partial Dismissal, the Kesslers asserted that each of the powers and remedies fall within the proper jurisdiction to the Commission due to the “Commission’s inherent constitutional powers . . . [and as] implied by incidental powers that are in addition to the powers expressed by statute.”

In reply, ALLETE continued its assertion that the remedies are not the type prescribed by law and contrary to the authority prescribed to the Commission. ALLETE also pursues an argument that the Commission is limited to the penal provisions provided in the Siting Act and ALLETE is not subject to the same statutory framework as rate regulated entities.

The Commission agrees with the Kesslers in that its powers and authority are not as limited as described by ALLETE. However, certain remedies requested by the Kesslers are beyond a reasonable application of authority, expressed or implied. The law expressly provides under which sections the commission may assess damages and attorney fees. To the extent that it was intended for the Commission to have authority to prohibit any future operations of Minnesota Power within the state, such authority would have been expressly granted.

The Kesslers’ request for surveying for patterns of misconduct is beyond the scope of the matters that the Commission intends to hear during this proceeding and would not be conducive to securing a just and expedient determination on the issues presented by the Kesslers.

Order

The Commission Orders that ALLETE's Motion for Partial Dismissal is GRANTED

PUBLIC SERVICE COMMISSION



Julie Fedorchak
Commissioner



Brian Kroshus
Chairman



Randy Christmann
Commissioner