

**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 RECONSIDERATION**

**March 24, 2021**

**Preliminary Statement**

On September 23, 2020 the North Dakota Public Service Commission (Commission) ruled on a Motion for Partial Dismissal Minnesota Power, a division of ALLETE (ALLETE). Among the claims dismissed was the following:

4. Order Minnesota Power to reimburse all attorney fees by the Kesslers relating to the prosecution of this action (Revised Complaint, ¶ 22, subpart 9).

On March 18, 2021, the Kesslers filed a Motion for Reconsideration of Order Dismissing Claim for Attorney Fees and filed a brief regarding reconsideration.

On March 22, 2021, the Kesslers filed a corrected Motion for Reconsideration of Order Dismissing Claim Damages (Motion for Reconsideration) and Brief.

On March 23, ALLETE filed a response to the Motion for Reconsideration.

**Discussion**

It the March 22, 2021 Motion for Reconsideration, the Kesslers requested the Commission reconsider its previous ruling that attorney fees were outside the scope of Commission authority.

In support of reconsideration. The Kesslers assert:

1. That the Public Service Commission has the authority to award damages to a prevailing complainant, regardless of any separate statutory provision.
2. That if a statutory provision is indeed necessary, Section 49-05-10 provides sufficient basis for allowing damages wherein it states “such public utility shall be liable to the persons, corporations, or limited liability companies affected thereby for all loss, damages, or injury caused thereby or resulting therefrom.

ALLETE recommending dismissal of the Motion for Reconsideration and responded with the following arguments:

1. The administrative agency procedure act and the Commission's general rules of practice and procedure impose a fifteen day limitation for motions for reconsideration. The Kesslers waited nearly six months to file a motion within a week of the evidentiary hearing and well after the close of discovery, hearing notice, and deadline for prefiled testimony. The Commission's Order was relied upon to conduct discovery and prepare for the evidentiary hearing. To allow an untimely reconsideration would deprive ALLETE of an opportunity to adequately prepare and present its case.

2. The Kessler's Complaint is tied to the Commission's siting authority; thus, N.D.C.C. §§ 49-22-20 and 49-22-21 prescribe the applicable remedies.

3. That the Kessler's reliance upon N.D.C.C. § 49-05-10 is misplaced due to misapplication of the term "public utility" to ALLETE and that the Kesslers omit the remainder of the section that provides that it is a "court" that would address a claim by the Kesslers for damages.

Having considered the Motion for Reconsideration, the Commission finds that the arguments provided are untimely and the support provided for the motion are a restatement of the considerations provided for the Commission's September 23 Order on Motion for Partial Dismissal. Supporting the Commission's previous dismissal due to lack of expressed authority § 49-05-10 states that to recover for such loss, damage or injury may be brought in any court of competent jurisdiction.

### **Order**

The Commission orders that the Kessler's Motion for Reconsideration is **DENIED**.

### **PUBLIC SERVICE COMMISSION**

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**Randy Christmann**  
Commissioner

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**Julie Fedorchak**  
Chair

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**Brian Kroshus**  
Commissioner