

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

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Geralyn R. Schmaltz deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **24th day of March 2021**, she deposited in the United States Mail, at Bismarck, North Dakota, **two** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and containing a photocopy of:

- **Order on Motion for Reconsideration**

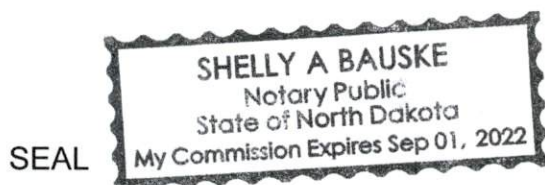
The envelopes were addressed as follows:

Mollie Smith
Attorney for Minnesota Power,
a division of Allete, Inc.
Fredrikson & Byron, P. A.
200 South Sixth Street Suite 4000
Minneapolis, MN 55402-1425
Cert. No. 7020 1290 0001 6150 3663

Lynn Boughey
Attorney for Keith & Deanna Kessler
PO Box 1202
Mandan, ND 58554-1202
Cert. No. 7020 1290 0001 6150 3670

The addresses shown are the respective addressee's last reasonably ascertainable post office addresses.

Subscribed and sworn to before me
this **24th day of March 2021**.



Notary Public

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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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, 2021, ALLETE filed a response to the Motion for Reconsideration.

Discussion

In 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 recommended dismissal of the Motion for Reconsideration and responded with the following arguments:

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Order on Motion for Reconsideration

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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 is 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


Randy Christmann
Commissioner


Julie Fedorchak
Chair


Brian Kroshus
Commissioner