

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

AMENDED ORDERS 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 filed by Minnesota Power, a division of ALLETE (ALLETE). Among the claims dismissed were the following:

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 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 an additional Motion for Reconsideration of Order Dismissing Claim Damages and Brief (together, the Motions for Reconsideration).

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

Discussion

In the March 18, 2021 Motion for Reconsideration, the Kesslers requested the Commission reconsider its previous ruling that attorney fees were outside the scope of Commission authority.

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

In support of the Motions for Reconsideration, the Kesslers assert:

1. That the Public Service Commission has the authority to award attorney's fees and 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.

3. Although express statutory authorization of fees and damages exist for some circumstances, it does not necessarily deny an award of fees and damages in other situations. The Commission should consider this an implied power.

ALLETE recommending dismissal of the Motions 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 Motions for Reconsideration, the Commission finds that the arguments provided are untimely and the support provided for the motions are a restatement of the considerations provided for the Commission's September 23, 2020 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 March 18, 2021, Motion for Reconsideration is **DENIED**.

The Commission orders that the Kessler's March 22, 2021, Motion for Reconsideration is **DENIED**.

PUBLIC SERVICE COMMISSION



Randy Christmann
Commissioner



Julie Fedorchak
Chair



Brian Kroshus
Commissioner