

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Casey and Julie Voigt
v. Coyote Creek Mining Company, LLC
Complaint**

Case No. RC-23-348

ORDER ON MOTION FOR ATTORNEY FEES

July 8, 2024

On June 8, 2023, Casey and Julie Voigt (Voigts) filed a Notice of Appeal and Specifications of Error in South Central District Court (Case No. 08-2023-CV-01338). The Notice of Appeal and Specification of Error challenges related to Commission grade approvals COY-035, COY-036, and COY-037. On August 18, 2023, the Voigts filed a Notice of Appeal and Specifications of Error regarding COY-034 grade approval (Case No. 08-2023-CV-01964).

On September 6, 2023, the parties filed a Stipulated Motion to Consolidate and Extend Deadlines. On September 26, 2023, the parties, including Coyote Creek Mining Company (CCMC), entered into a Stipulation and Request for Stay and agreed that the Voigts would file a complaint with the Commission and request a formal hearing to address the matters raised on appeal through an adjudicative proceeding. The parties agreed if the Commission accepts the complaint, holds a formal hearing, and issues a final decision, the Voigts would file a motion to voluntarily dismiss the appeal with prejudice within three business days of the Commission's Order.

On October 26, 2023, the Voigts filed a Notice of Appeal and Specifications of Error regarding grade approvals COY-038 and COY-039. As with the prior stipulation, the parties agreed that the Voigts would file a formal complaint with the Commission and attempt to resolve the dispute before the agency through a formal hearing on the grade approvals.

On November 22, 2023, the Voigts filed a complaint with the Commission as stipulated by all the parties and claimed that Coyote Creek Mining Company's (CCMC) grade approvals did not comply with and violated the requirements of N.D.A.C. § 69-05.2-15-04. Upon notice, the Commission held a hearing on December 22, 2023, in the Public Service Commission Hearing Room, 12th Floor, State Capitol, Bismarck, North Dakota.

On February 14, 2024, the Commission issued its Findings of Fact, Conclusions of Law, and Order (Order). The Order affirmed the grade approvals and dismissed the complaint. In its Order, the Commission provided that based upon the circumstances of the proceeding, including the fact that all parties agreed to the administrative process to address the issues, the Commission declined to assess attorney fees.

On March 13, 2024, the Voigts filed a notice of appeal and specifications of error in South Central District Court pursuant to N.D.C.C. § 28-32-42 requesting reversal of the Commission's decision. A decision from the court is currently pending.

Discussion

On April 2, 2024, CCMC filed a motion for Attorney's Fees pursuant to N.D.C.C. § 38-14.1-36 and N.D.A.C. § 69-05.2-01-07 and provided an attachment of fees. The motion alleges a misuse of the Commission's process and continued harassment, asked the Commission to engage in improper rulemaking, and that the complaint lacked any factual or evidentiary basis. In support of its motion, CCMC provided a litany of previous litigation by the Voigts, although some of the provided litigation was outside of the Commission's process.

In objecting to the initial application NACC-1302, the Voigts brought forth several issues in Case No. RC-13-850 (grassland seed mixtures, productivity of reclaimed lands, compaction and spoil grading, county road closures, mine signage, his coal lease, and the alluvial valley floor finding). In objecting to Renewal No. 1 and Revision No. 9 of NACC-1302, the Voigts brought forth several reclamation issues regarding seeding, compaction, and cover crops, the alluvial valley floor finding, sediment buildup, and dust. In the captioned case, the Voigts complaint was about suitable plant growth material (SPGM) respread. While spoil quality and soil issues have been previously broadly discussed, the depth of respread was largely unaddressed. Further, all parties, including the mine, stipulated to use the administrative process to address the complaint.

Finally, given the ongoing review, the existing findings on attorney fees and the ongoing review of the Commission's order under N.D.C.C. ch. 28-32, the Commission believes the reviewing court would more appropriately address any further redress of attorney fees.

ORDER

Accordingly, it is ORDERED that CCMC's Motion for Attorney's Fees is DENIED.

PUBLIC SERVICE COMMISSION



Sheri Haugen-Hoffart
Commissioner



Randy Christmann
Chair



Julie Fedorchak
Commissioner