

COUNTY OF DAY

FIFTH JUDICIAL CIRCUIT

GERALD PESALL, Appellant

v.

MONTANA-DAKOTA UTILITIES, OTTER  
TAIL POWER, SCHURING FARMS, INC.,  
BRADLEY MOREHOUSE, and the SDPUC,  
Appellees

APPELLANT'S AMENDED DOCKETING  
STATEMENT

CIV 14-53

SECTION A.

TRIAL COURT

- 1. The Circuit Court from which the appeal is taken: Fifth Circuit
- 2. The county in which the action is venued at the time of appeal: Day
- 3. The name of the trial judge who entered the decision appealed: Hon. Scott P. Myren

PARTIES AND ATTORNEYS

- 4. Identify each party presently of record and the name, address, and phone number of the attorney for each party.

Gerald Pesall, Appellant

Attorney: N. Bob Pesall  
Address: P.O. Box 23, Flandreau, SD 57028  
Telephone: (605) 573-0274

Montana Dakota Utilities and Otter Tail Power, Appellees

Attorney: Thomas J. Welk  
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Schuring Farms, Inc., Appellee

Attorney: Pro Se  
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Telephone: (605) 298-5238

Bradley Morehouse, Appellee

Attorney: Pro Se  
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South Dakota Public Utilities Commission's, Appellee  
Attorney: John Smith  
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Telephone: (605) 773-3201

Maxine Fischer, Brown County Auditor, Appellee  
Attorney: None  
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Sandra Raap, Day County Auditor, Appellee  
Attorney: None  
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Karen Layer, Grant County Auditor, Appellee  
Attorney: None  
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James R. McKane III, Appellee  
Attorney: None  
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Kevin Anderson, Appellee  
Attorney: None  
Address: 100 S. First Andover, SD 57422  
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Clark T. Olson, Appellee  
Attorney: None  
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SECTION B.

TIMELINES OF APPEAL

1. The date the judgment or order appealed from was signed and filed by the trial court: 12-24-14
2. The date notice of entry of the judgment or order was served on each party: 12-30-14
3. State whether either of the following motions was made:
  - a. Motion for Judgment n.o.v. SDCL 15-6-50(b): Yes\_\_\_\_\_ No\_\_X\_\_
  - b. Motion for New Trial, SDCL 15-6-59: Yes\_\_\_\_\_ No\_\_X\_\_

NATURE AND DISPOSITION OF CLAIMS

- 4. State the nature of each party's separate claims, counterclaims, or cross claims and the trial court's disposition of each claim (e.g., court trial, jury verdict, summary judgment, default judgment, agency decision, affirmed/reversed, etc.)

Montana-Dakota Utilities and Otter Tail Power (Applicants) filed an application with the Public Utilities Commission for a permit to construct a transmission line from a substation near Ellendale, ND to a substation near Big Stone, SD. Gerald Pesall intervened. Applicants claimed that the proposed project would meet the statutory requirements, including those in S.D.C.L. 49-41B-22 and that the permit should be issued. Gerald Pesall claimed that the permit should not be issued because the project would not meet the statutory requirements, and that the terms of the proposed Order were an unlawful delegation of Commission authority or unlawfully extended the decisional period beyond one year.

The Commission issued its Final Decisional Order granting the permit on August 22, 2014. Gerald Pesall appealed to the Circuit Court in Day County, SD, raising six issues:

- 1. Whether the Commission issued findings of fact which were clearly erroneous,
2. Whether the Commission erred by admitting certain studies into evidence,
3. Whether the Commission erred in concluding that the Applicants had met their burden of proof,
4. Whether the Commission correctly applied the burden of proof,
5. Whether the Commission improperly delegated its authority to the Applicants, and
6. Whether the Commission's order improperly extended the decisional period beyond one year.

On review, the Circuit Court modified certain findings of fact but otherwise affirmed the Commission's Final Decision and Order.

- 5. Appeals of right may be taken only from final, appealable orders. See SDCL 15-26A-3 and 4.

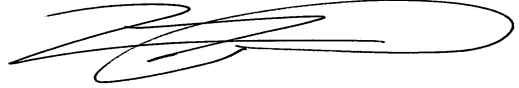
a. Did the trial court enter a final judgment or order that resolves all of each party's individual claims, counter-claims, or cross-claims? Yes\_\_X\_\_\_ No\_\_\_\_\_

b. If the trial court did not enter a final judgment or order as to each party's individual claims, counterclaims or cross-claims, did the trial court make a determination and direct entry of judgment pursuant to SDCL 15-6-54(b)? Yes\_\_\_\_\_ No\_\_\_\_\_

- 6. State each issue intended to be presented for review. (Parties will not be bound by these statements.

In this appeal, Gerald Pesall intends to seek review on the issue(s) of whether the the Commission's Order constitutes an unlawful delegation of authority or unlawfully extends the decisional period beyond one year.

Dated this 29<sup>th</sup> Day of January, 2015



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(605) 573-0274

A copy of the Commission's Final Decision and Order and the Circuit Court's Judgment affirming the same are attached pursuant to SDCL 15-26A-4(2).