ORIGINAL

No. 21-6385

SUPREME COURT OF THE UNITED STATES

THOMAS J MATTSON
and
EDWARD J. DOSTAL
Petitioner,
V.
BASIN ELECTRIC POWER COOPERATIVE,
ROSEBUD ELECTRIC COOPERATIVE, INC.,
BUTTE ELECTRIC COOPERATIVE, INC.,
GRAND ELECTRIC COOPERATIVE, INC.,
MOREAU-GRAND ELECTRIC COOPERATIVE, INC., AND
RUSHMORE ELECTRIC POWER COOPERATIVE, INC.,
LYNN, JACKSON, SHULTZ & LEBRUN, P.C.
Attorney Michael L. Luce
Attorney Miles F. Schumacher
Attorney Dana Van Beek Palmer
Thomapson Coburn LLP
Attorney Margaret McNau
Attorney Peter K. Matt

Respondents

On Petition for a Writ of Certiorari to
The South Dakota Supreme Court

PETITION FOR A WRIT OF CERTIORARI

Thomas Mattson pro, se
146 Alpine DR.
Green Bay, Wi, 54302
920-393-4131

Edward Dostal, pro se
Gregory, S.D. 54242
29862 338th Avenue
605-830-4638

Questions Presented

The Questions presented below correspond to violations of Petitioners constitutional, due process, supremacy clause, Public Utility Regulation Policy Act (PURPA), State and Federal court precedence, therefore requiring this court to make a final determination and correct said violations and State and Federal confusion.

1. The South Dakota Supreme Court dismissal order used the motion for appeal filing fee payment date rather than the actual filing date causing the Petitioners motion to be filed after the thirty day motion for appeal window, was this correct or a violation of Petitioners due process and supremacy clause rights and numerous State thirty day timeline orders.

2. Did the Respondents violate Section 2 of the Sherman Act, and 15. U.S.C. s 2. The SD court did not make a determination.

3. Did the circuit court motion for summary judgment order error when it determined that the Respondents are non regulated utilities.

4. Are non regulated utilities required to follow PURPA regarding their avoided cost determinations.

5. Did Respondents commit fraud when lower avoided rate rates were provided to Petitioners vs other Qualifying facilities.

6. Did the circuit court abuse its discretion violating Petitioner's PURPA, due process and supremacy clause rights when Tri-State vs Delta-Montrose 151 FERC ¶ 61,238 was not followed.

7. Did Respondent Basin illegally interfere with Petitioners PURPA rights, rights to contract, when it took over ppa negotiation from the distribution Respondents (everyone other than Basin) and Petitioners from 2009 to 2016.

8. The SD Supreme court ruled that motions for a new trial, Rule 59 and Rule 60 motions are not appealable, was this ruling correct.

9. Should the circuit court have sanctioned Plaintiff Prelude Attorney Robert Lorge for his procedural

errors rather than dismissing the Petitioners case with prejudice, harming the Petitioners for an attorney mistake.

10. The circuit court did not allow Edward Dostal to read his prepared statement during the motion for summary judgment hearing, which was by phone, were his constitutional rights were violated.

11. Should the Petitioners motion to dismiss of Petitioners motion for appeal have been disregarded for being filed late.

12. Should the S.D Circuit Court have provided pro se Petitioner Edward Dostal guidance on motion for summary judgment response requirements. There is a great deal of case precedence and due process orders, therefore this court should make a final determination.

13. When pro se Petitioners filed their motion for appeal by email, should the clerk have informed Petitioners of what the filing fee was rather than sending the filing back by mail for a lack of filing fee payment in violation of clerk duties and a due process violation.

14. Should the courts have ordered Respondents to pay damages for lost QF wind farms, lost developer fees, wind farm revenues lost, and lost tax benefits such as production tax credits (PTC). There are FERC PURPA, State, and US Supreme Court orders establishing why the SD courts should have granted damages, therefore this court should determine damages and order the ppa's to be signed.

15. Did the Circuit Court and the Respondents commit ex parte violations regarding Edward Dostals motion for a new trial dismissal order development.

16. Did the circuit court abuse its discretion and violate Edward Dostals constitutional rights, State and Federal precedents when the court dismissed Edward Dostals motion for a new trial which was not timely contested by the Respondents.

17. Did the SD Supreme Court have jurisdiction to rule upon Petitioner's motion for sanctions, which the court dismissed for a lack of merit.

18. Should damages be paid based upon attorneys perjury and fraud. There are many State and

federal orders based upon attorney fraud, sanctionable events showing damages are required.

19. Did the circuit court violate PURPA when it did not establish the avoided cost in cents per kilowatt hours, and order the power purchase agreement to be signed.

20. Did the circuit court error when it asked the Respondents questions regarding PURPA, when the Respondents had not provided any prima facie evidence or expert witnesses.

21. Did the circuit court error when it determined that the circuit court did not have PURPA discovery jurisdiction.

22. Are the Respondents a regulated utility?

23. Was the 2013 South Dakota Public Utility Commission Utility Oak Tree ruling precedent for Petitioners 2013 Qualifying facilities.

24. What should the Petitioners QF power purchase avoided cost rate be based upon.

25. Should all courts be required on their own accord to protect the constitutional rights of pro se and grant an appeal based upon violations by the previous court for not informing pro se of local practices and procedure requirements, without any initiation by the pro se. There are a great deal of State orders, US Supreme Court orders, and articles on the subject, therefore this court can order a further determination, and overturn the dismissal and write a type of "MIranda Act" act for pro se protection

26. Can Petitioners receive a change of venue to Wisconsin for any part of this case that is sent back to the lower courts. Petitioners need protection of our constitutional rights, and do not feel we have received a fair trial in S.D.

PARTIES TO PROCEEDING

Pursuant to Federal Rule of Appellate Procedure 26.1, Petitioners submit that they have no parent corporations and no publicly issued stock shares or securities. No publicly held corporation holds stock in any of the Petitioners.

Related cases

South Dakota Public Utility Commision Case # EL14-042
Complaint by Prelude, L.L.C. against Basin Electric Power Cooperative, Butte Electric Cooperative, Inc., Grand Electric Cooperative, Inc., Moreau-Grand Electric Cooperative, Inc., Rosebud Electric Cooperative, Inc., and Rushmore Electric Power Cooperative, Inc. for Refusing to Enter into Qualified Facilities Purchase Power Agreements

Sd Circuit Court case 61CIV15-000050
S.D Supreme Court Notice of Joint Appeal. 61CIV15-000050

PRELUDE LLC
and
EDWARD J. DOSTAL,
Plaintiffs
V.
BASIN ELECTRIC POWER COOPERATIVE,
ROSEBUD ELECTRIC COOPERATIVE, INC.,
BUTTE ELECTRIC COOPERATIVE, INC.,
GRAND ELECTRIC COOPERATIVE, INC.,
MOREAU-GRAND ELECTRIC COOPERATIVE, INC., AND
RUSHMORE ELECTRIC POWER COOPERATIVE, INC.,
Defendants

And

S.D Supreme Court Motion for Sanctions 61CIV15-000050

THOMAS MATTSON
and
EDWARD J. DOSTAL,
Plaintiffs

VS
LYNN, JACKSON, SHULTZ & LEBRUN, P.C.
Attorney Michael L. Luce
Attorney Miles F. Schumacher
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110 N. Minnesota Avenue, Suite 400
PO Box 2700
Sioux Falls, SD 57101-2700

Peter K. Matt
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Respondent parties: Rule 14.1(b)(i).

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Butte Electric cooperative
109 Dartmouth Ave,
Newell, SD 57760

Rosebud electric Cooperative
512 Rosebud Ave,
Gregory, SD 57533

Grand Electric Cooperative
801 Coleman Ave,
Bison, SD 57620

Moreau-Grand Electric Cooperative
405 9th St,
Timber Lake, SD 57656

Rushmore Electric Cooperative
1715 Cambell St,

Rapid City, SD 57701

Basin Electric Power Cooperative
1717 East Interstate Ave.
Bismarck, ND 58503-0564

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9. Small distribution defendants did not sign ppa at their avoided cost in violation of FERC precedent rulings and PURPA.

10. Sanction against Respondents attorney's should have been determined.

11. The court violated Edward Dostals constitutional rights by not allowing him to read his prepared statement.

12. New pro se written rights should be formally established.

1. Court procedure to be provided to pro se rather than losing on a procedural error. Motion for Rule 59 and Rule 60 are appealable, but was denied by the SD Supreme Court, Motion for new trial showed evidence of perjury and fraud and yet were denied. PURPA required the power purchase agreement to be signed requiring the circuit court to establish the avoided cost; the court did not in violation of PURPA and its imperative authority. Non regulated utilities need to follow state law, PURPA, and FERC when establishing their avoided cost. PURPA needs clarification from divergent FERC rulings regarding avoided cost for distribution non generating cooperative utilities. There have been many due process violations, local practices violating Petitioners rights. Robert Lorge should have been sanctioned for his egregious procedural errors and legal representation rather than the circuit court dismissing the case with prejudice harming the due process rights of the Petitiones. The SD Supreme Court order stated they did not have jurisdiction to hear the motion for sanction or merit filed against the Respondents' attorneys. Respondent's attorneys committed perjury and fraud and should be sanctioned and Respondents should not prosper from the perjury and fraud of their attorneys. A myriad of case law justifies this position. By not enforcing PURPA and providing damages and ordering power purchase agreements to be signed as PURPA mandates the SD courts violated PURPA, Federal law supremacy clause.

Damages are in the hundreds of millions of dollars, Petitioners went from 46 QF wind farms to 6. All caused by the Respondents' fraud and purposeful violations of PURPA, State, federal law and FERC Rulings, therefore this court's intervention and dismissal of the SD courts order is justified.

Table of Authorities

SD State Statute

Federal Statute

Petition for Writ of Certiorari

Thomas Mattson and Edward Dostal both pro se, respectfully petition this court for a writ of certiorari to review the judgments of the South Dakota Supreme Court and S.D Circuit Court.

Opinions Below

The decision by the South Dakota Supreme Court denying Petitioner's motion for appeal was filed on March 16th 2021. The denial of the Petitioners motion for reconsideration was filed on April 16th 2021, and the Petitioners motion for sanctions was dismissed May 17th 2021. The orders are found in the Appendix at 1-4.

Jurisdiction

Thomas Mattson and Edward Dostal petition for hearing to the South Dakota Supreme Court was denied April 16th 2021. Thomas Mattson and Edward Dostal invokes this Court's jurisdiction under 28 U.S.C § 1257, 2101(c), having timely filed this petition for a writ of certiorari within ninety days of the South Dakota Supreme Court's judgment.

Constitutional Provisions Involved.

Due Process, Article VI, Paragraph 2 Supremacy Clause, First, Seventh, Eighth, Ninth and Fourteenth Amendments

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Statement of the case

Petitioners tried to negotiate for five years before filing the lawsuit. Respondents caused their own liability. They are sophisticated individuals, with representation. The law is clear, and they choose to violate it. Incorrectly, believing they can act with impunity.

The South Dakota courts did not follow SD Statute, PURPA, Federal Energy Regulatory Commission (FERC) rulings, other State precedence, US Supreme Court orders or the constitution all to the harm of the Petitioners and to the benefit of the Respondents. Petitioners believe without doubt that there were so many violations of law that the SD courts needs

to be overturned, and the Respondents need to be held to account. .

Respondents' summary judgment undisputed facts were deemed admitted when Robert Lorge and Edward Dostal did not file a separate undisputed fact document. Robert Lorge should have been sanctioned rather than penalizing Plaintiff Prelude. A due process violation. Prelude LLC is solely owned by Thomas Mattson. Prelude's claim was assigned to Thomas Mattson. The circuit court did not inform Edward Dostal of summary judgment requirements and the ramification of not following the statute. On January 2nd 2020 the court granted the Respondent's motion for summary judgment. On January 27th 2020 Edward Dostal submitted a motion for a new trial and answer to the Defendants undisputed fact document. Edward Dostal's motion stated "I pray that this Honorable Circuit Court grants my Motion for New Trial, based upon 15-6-60(b), 15-6-59, 15-6-12(f), 15-6-56(g). I also pray that this Honorable Circuit Court grant my Motion for Partial Judgment to establish the avoided cost rate based upon the legally enforceable obligation(LEO) rate." The Respondents did not submit an opposition document. On January 1st 2021 Thomas Mattson filed a motion for a new trial and an assignment of the claim from Prelude to Thomas Mattson. Thomas Mattson's motion was based upon incompetant counsel, new evidence, fraud, further discovery, abuse of discretion, Fifth Amendment Due Process, error in law, Rule 60(b).and 22-29-1 a class 5 felony. 22-29-5. Fri, Jan 22, 2021 at 12:05 PM. The Respondents filed an opposition to Thomas Mattson's Motion for a New Trial, and submitted a proposed order dismissing Thomas Mattson motion. On Fri, Jan 22, 2021 12:51 PM. The court filed a dismissal order. On Jan 25, 2021 11:40 AM, Respondents emailed the court requesting that the dismissal order include dismissal of Edward Dostals motion for a new trial. The court obliged later that day. On January 27th the new dismissal was filed. The odd nature of Edward Dostals motion for a new trial dismissal order development is an ex parte violation.

Robert Lorge agreed that there was no tortoise interference and defamation from 2009 to 2011. A complete dereliction of duty. "THE COURT: So Mr. Lorge indicated that he agrees that

the defamation and the tortious interference with contract claim should be dismissed." MR. DOSTAL: If he states it, it's true". Transcript page 36 line 25 and page 37 line 1-3. Edward Dostla agreed thinking there must have been a deal between Robert Lorge and the Respondents. The hearing was by phone so there was no opportunity to ask Robert Lorge. Additionally the circuit court improperly limited discovery. The Defendant's own SDPUC motion to dismiss argued "Any challenge to Basin Electric's or any other non-regulated electric utility's avoided costs rate is properly brought in an appropriate court, not before the State regulatory authority." (Prelude LLC filed May 5, 2014, before the South Dakota Public Utility commision who ruled they did not have jurisdiction over a non regulated utility.) Removing discovery also limited potential questions still remaining, allowing the court to grant the motion for summary judgment. In 2016 during a dismissal hearing the Respondents made the same discovery argument. The previous judge said the Respondents had to provide discovery. The 2016 discovery showed that the small distribution Respondent's average avoided rate was over five cents. While Basin's short term rate was near two cents and the purchased avoided rate was higher than 4 cents. Shortly after receiving the avoided cost Petitioners sent the Respondents 19 Qualifying Facility ppa's with an avoided rate of 5 cents with 2% inflation over twenty years Basin rate was over 6.4 cents with an inflation rate from 2008 to 2017 average over 9%. The Respondents replied by letter stating that the ppa was not Basins avoided cost, and not a PURRA ppa, and therefore not acceptable. No counter offer was sent. During the summary judgment hearing Respondent attorney stated."Prelude undertook a business decision not to enter into a power purchase agreement with Basin Electric with calculated avoided cost." Transcript page Page 22 line 22-24. QF ppa's are with the small distribution retail utilities, not the wholesale supplier. The motion for a new trial provided the Petitioners submitted ppa. The court erred in law. The court should have ordered the ppa signed at the small distribution Respondents avoided rate. During the summary judgment hearing Respondents also said Prelude's expert avoided cost document was based upon conjecture and not Basin. "It's not

specific to Basin Electric. Page 30 line 24. The purchased avoided cost came from Basin provided discovery. Inflation and capacity was from outside sources. When the court asked Robert Lorge about the expert document he agreed with the Respondents. Respondents also said Petitioners never requested the avoided cost before filing removing cause for bad faith. The court agreed, Robert Lorge did not correct Respondents. Edward Dostal had a prepared statement which would have, but he was not allowed to read it by the court. The Respondents also argued time limitation. Since 2008 Petitioners had requested the avoided rate. Basin would provide different avoided cost figures to Petitioners versus other QF wind farmers. For example a subsidiary of Basin signed a ppa with South Dakota Wind Partners LLC's at 4.3 cents plus inflation While in 2011 Petitioners requested the avoided cost and a Basin representative responded by letter stating the rate was near the 2008 quoted rate. The 2008 rate was near 2 cents a kwh. In 2011 Respondent Grand Electric filed PURPA avoided cost at 4.3 cents with the SDPUC. No other small distribution Respondents filed, violating PURPA. In 2019 Edward Dostal requested the avoided cost and Respondents submitted SDPUC filings. All the new SDPUC documents were the same and based upon Basin avoided cost, and we're back dated. Grand Electric 2011 new avoided cost was 1.73 cents, and the old document was removed. The SD courts were told of this behavior, but nothing was done. After submitting ppa's in 2014 Respondent Basin corporate attorney sent a letter stating that the highest short term avoided rate was Basin's Leland Old coal plant which was near two cents and the long term avoided rate was based upon a request for proposal (RFP) near 2.5 cents. Petitioners QF's are legally enforceable obligation QF wind farms. FERC ruled that an RFP can not be used for LEO long term rates. In 2019 discovery proved that Basins's natural gas facilities avoided cost were more than twice as high as Leland, proving ongoing fraud. Petitioners never received the natural gas facility avoided rates for 2008 to 2015. Even after repeated interrogatory requests. The motion for a new trial and motion for appeal provided proof of Respondents and their attorney's perjury and fraud. The initial filing also had emails showing

past requests for avoided cost prior to filing. Prior to the summary judgment hearing, Basin reached a threshold requiring Basin to apply for FERC regulations. The Respondents did not inform the court or Petitioners. Respondents' briefs and affidavits stated Respondents are non regulated, while Basin's website says "FERC approved Basin Electric market-based rates applications on June 5 for the cooperative's eastern interconnected system operations. Basin Electric became subject to FERC rules and regulations Nov. 1, 2019, due to the growth of member-owner systems." www.basinelectric.com/news-center/news-briefs/basin-electric-completes-additional-ferc-filings. The motion for summary judgment hearing was December 30th 2019. Edward Dostal prepared a statement regarding the FERC application and examples of bad faith, tortoise interference, and other arguments for denial of the summary judgment. The court would not allow him to read the document violating Edward Dostlas due process rights. The motion for appeal and motion for a new trial provided proof of The Respondents and their attorney's perjury and fraud, Respondent's attorneys did not correct the record. After waiting more than one month Petitioners filed a motion for sanctions. The SD Supreme Court said they did not have merit, or jurisdiction. The SD Supreme Court order dismissing Petitioner's motion for appeal used March 5th rather than the actual filing date of February 21st. The filing was emailed March 21st, 2020, and mailed March 22, 2020.

Thomas Mattson <prelude1234@gmail.com> Sun, Feb 21, 9:12 PM

to

Abbie Langerock
<alangerock@lynnjackson.com>

"Honorable Bobbi J. Rank
(bobbi.rank@ujs.state.sd.us)"
<bobbi.rank@ujs.state.sd.us>,
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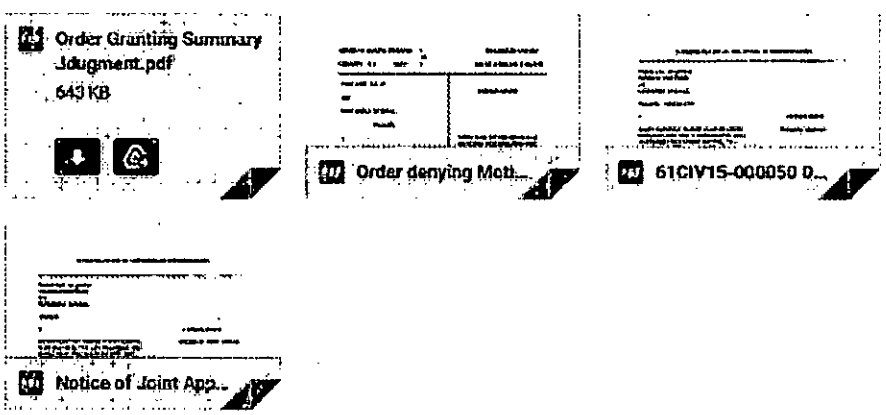
<pmatt@thompsoncoburn.com>,
Dana Palmer <dpalmer@lynnjackson.com>,
Miles Schumacher
<mschumacher@lynnjackson.com>,
Michael Luce <mluce@lynnjackson.com>

date: Feb 21, 2021, 9:12 PM
subject: Re: 61CIV15-50; Prelude LLC, et al. v. Basin Electric Power Cooperative, et al.
mailed-by: gmail.com

Please find attached Appellant Notice of Joint Appeal, filed by Thomas Mattson and Edward Dostal. A Docketing Statement, Notice of Joint Appeal, the summary judgment hearing order, the motion for new trial order. and the summary judgment. I did not include the request for the transcript since it has already been completed. I hope you have a wonderful day, Sincerely Thomas Mattson

4 Attachments

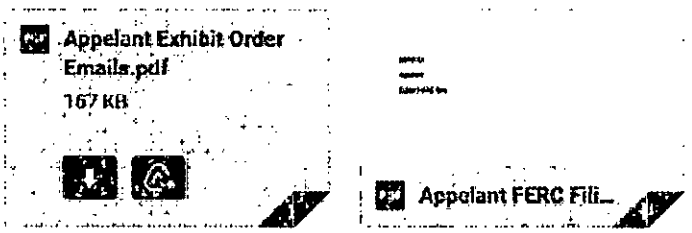


Thomas Mattson <prelude1234@gmail.com>
Attachments

Sun, Feb 21, 10:13 PM
to Abbie, Honorable, dostaled@yahoo.com, Meg, Peter, Dana, Miles, Michael

Thomas Mattson and Edward Dostal motion for joint appeal exhibits attached.

2 Attachments



On March 2nd. From: Thomas Mattson
Sent Tuesday, March 02, 2021 11:30 PM
To Calhoo, Jody<jodi.calhoon@ujs.state.sd.us>
Sub[Ext} Filing fees
Hi Jody, I filed a motion for appeal with the supreme court on the 21st. When is the fee paid. I have tried to figure out the bond thing, but I have no idea how it pertains. Thanks Thomas Mattson.....

On Wed March 3rd 2021 at 2:03 PM
From: Calhoon, Jody<jodi.calhoon@ujs.state.sd.us>wrote
The documents were returned yesterday as there was no fee-I have enclosed the instructions from the supreme court detailing what is needed when filing an appeal.

On March 5th 2021 Edward Dostal went to the Tripp County Circuit Court to pay a 500 dollar bond. The clerk only accepted a 150 dollar motion appeal fee. The appeals statute does not state a 150 dollar fee. After receiving the motion by email the clerk should have stated what the fee was. The Respondent's filed a motion to dismiss March 12th, 2020. The Respondents motion was late. The Respondents motion said the motion filing date was March 5th 2021. The SD Supreme Court used March 5th 2021 as the filing date. violated precedence, SD Statute, the constitution. The SD Supreme Court also stated that a motion for a new trial was not appealable, violating SD Statute, State precedence and a due process violation. On March 24th, 2021 Petitioners filed a motion for reconsideration. The Respondents did not file a response. On April 13th 2021 the Petitioners filed a motion for sanctions against the Appellants attorneys. The Respondents did not file a response. On April 16th 2021 the SD Supreme Court dismissed the motion for reconsideration. On May 17th 2021 the SD Supreme Court dismissed the motion for sanction based upon a lack of jurisdiction, and merrit

The SD courts did not establish the avoided cost or order the ppa to be signed. FERC has ruled that retail distribution cooperatives had to follow purpa and sign at their avoided rate, not the wholesale supplier rates.The ruling was supplied to the courts, but not followed. The QF were filed predominantly between 2013-2015. The Respondents' illegal behavior caused the Petitioners to lose 24 QF wind farms prior to the summary judgment hearing, with a total nameplate size of 731.5 MegaWatt (MW). Petitioner's expert witness Dr Fell provided the PTC value. Dr Fell's report did not contain a signed affidavit, along with many documents he referenced. Dr Fell updated the document which was then submitted by Edward Dostal in his motion for a new

trial. The average PTC value was a little over $1,000,000 a MegaWatt (MW). At 45% capacity factor the loss is $329.175 million. PTC and accelerated depreciation are typically sold in a Minnesota Flip financing structure so that small developers can receive financing. Petitioners also lost the developer fee of 6 to 8 percent of installed cost. At $1.8 million a MW the developer fee is 105.336 million. The court ruled that PUPRA does not allow for damages, and did not rule on tortoise interference, fraud and violations of the Sherman Act. Petitioners provided case law and the FERC precedence that said damages are for the circuit court to determine. After the summary judgment hearing Petitiones lost another 13 QF wind farms with a total 313.5 MW nameplate. A developer fee loss of $58.32 million and PTC losses of approximately 141.075 million dollars.

This case in its complexity requires this court's intervention and ruling. "It is the duty of the Court to be watchful for the Constitutional Rights of the Citizen and against any stealthy encroachments thereon." Boyd v. United States (116 U.S. 616 (1885)); "It is well established that legislative enactments may not coerce performance of service by penalizing non-performance." See People v. Lavender (398 N.E. 2d at 530(1979)

Reason for granting the Writ.

1. "Rights of the pro se cannot be held to the stringent standard rule and formal pleading of Attorney's" Hanes v. Kerner 404 US 519. "Kennedy as a pro se litigant, can state a cause of action even if he points to the wrong legal theory, so long as "relief is possible under set of facts that could be established consistent with the allegations." Shannon v. Shannon, 965 F.2d 542 (7 th cir. 1992). "the complaint does not necessarily have to point to the proper statute in order to state a cause of action to which he is entitled relief" Kennedy v. National Juvenile Detention Association and Illinois Juvenile Justice Commission, 97 C 261 (7 th Cir. 1999).
2. The 9th and 6th amendment Supremacy Clause required the SD courts to follow the constitution, PURPA, FERC rulings, and legal precedence. "Any other [456 U.S. 742, 761] conclusion would allow the States to disregard both the

pre-eminent position held by federal law throughout the Nation, cf. Martin v. Hunter's Lessee, 1 Wheat. 304, 340-341 (1816), and "..congressional determination that the federal rights granted by PURPA can appropriately be enforced through state adjudicatory machinery. Such an approach, Testa (*Testa v. Katt, 330 U.S. 386 (1947)*) emphasized, "flies in the face of the fact that the States of the Union constitute a nation," and "disregards the purpose and effect of Article VI of the Constitution." 330 U.S., at 389 Supreme Court FERC v. MISSISSIPPI (1982) No. 80-1749 and 330 U.S., at 389. "Testa v. Katt is instructive and controlling on this point. There, the Emergency Price Control Act, 56 Stat. 34, as amended, created a treble-damages remedy, and gave jurisdiction over claims under the Act to state as well as federal courts...Testa v. Katt, "supra, by declaring that "the policy of the federal Act is the prevailing policy in every state," 330 U.S., at 393 United States Supreme Court FERC v. MISSISSIPPI (1982) No. 80-1749. "Where rights secured by the constitution are involved, there can be no rule making or legislation that would abrogate that." See Miranda v. Arizona (383 US 436,491 (1966) "The assertion of a constitutional right when plainly and reasonably made, cannot be defeated under the name of local practice, or upon local grounds." See Davis v. Welsher (263 US 22,24 (1923) "Even though the states have their own constitutions, but once the United States Constitution has Been ratified, then the Ninth Amendment comes into direct application here as a result of the act, for the states as well as the national government, may not do that which is forbidden, or not granted; and neither can they do so that by the back door, that which cannot be done by the front door, and any legislative enactments counter the Constitution is null and void not law at all" See, Marbury v. Madison 5 U.S. 137 (1803).

3. Plaintiff Prelude lead counsel Robert Lorge did not answer the Respondents undisputed fact document separately as required by statute, therefore the case was dismissed with prejudice and the Respondents summary judgment was granted. The Court: "Ordered, Adjudged and Decreed that Plaintiffs, having neither filed or served the required response to Defendants' Statement of Undisputed Material Facts submitted and filed by Defendants as required under SDCL §

15-6-56(c)(2), are deemed to have admitted all facts stated in Defendants' Statement of Undisputed Material Facts, as provided in SDCL § 15-6-56(c)(3), and accordingly, there are no genuine issues of material fact that remain:" Rather than Petitioners paying the price Robert Lorge should have been sanctioned. This is a due process violation. The motion for a new trial made this argument. Jackson v. Washington Monthly Co., 569 F.2d 119, 122 (D.C. Cir. 1977) " We reverse, however, on the basis that the motion to vacate should have been granted under Rule 60(b)(6). The conduct of Krehel indicates neglect so gross that it is inexcusable. The reasons advanced for his failure to file opposing documents in a timely fashion are unacceptable." and in "Rule 60(b)(1)—in Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership, 507 U.S. 380, 393 (1993). "Rule 60(b)(6) relief may be appropriate where the party's attorney has acted with gross negligence." See Norris v. Salazar, 277 F.R.D. 22, 25 (D.D.C.2011). Community Dental Services v. Tani,49 the Ninth Circuit Court of Appeals "...does not bar a finding that gross negligence by a client's attorney may comprise extraordinary circumstances." (citing Carter v. Albert Einstein Med. Ctr., 804 F.2d 805, 807 (3d Cir. 1986) "relief under Rule 60(b)(6) may often constitute the only mechanism for affording a client actual and full relief from his counsel's gross negligence-that is, the opportunity to present his case on the merits." Cmty. Dental Servs. v. Tani, 282 F.3d 1164, 1172 (9th Cir. 2002) Upper Plains Contracting Inc. v. Pepsi Americas Supreme Court of South Dakota Jan 8, 2003 2003 S.D. 3 (S.D. 2003) No. 22388 "preserve the delicate balance between the sanctity of final judgments and the incessant command of a court's conscience that justice be done in light of all the facts." and "...the judicial system is compromised when the wrongdoing of a lawyer-an officer of the court-prevents his client's case from being tried on the merits"...." "[w]hen an attorney is grossly negligent.., the judicial system loses credibility as well as the appearance of fairness, if... an innocent party is forced to suffer drastic consequences." "Attorney gross negligence, considering notions of judicial prestige, should be a valid basis for Rule 60(b)(6) relief." Marquette Law Review page 1008 and 1009. "If one cannot

say with fair assurance, after pondering all that happened without stripping the erroneous action from the whole, that the judgment was not substantially swayed by the error, it is impossible to conclude that substantial rights were not affected. P. 328 U. S. 765. Kotteakos v. United States, 328 U.S. 750, 759 (Page 8)

4. The SD Supreme Court's dismissal order stipulated that the Petitioner's motion for appeal was filed thirty day after the dismissal of the motion for a new trial. This was incorrect. The circuit court order was filed January 27th 2021. The Petitioners motion for appeal was filed 25 days later on February 21st 2021 by email, and sent by regular mail February 22nd 2021. The Respondent's motion to dismiss said the filing date was March 5th 2021. Respondent's motion was filed March 12th 2021, in violation of SD Statute 15-26A-16 and FRCP Rule 27A(3)(A). The Petitioners motion for reconsideration stated SD Statute 15-26A-16. "Response to petition."Within seven days after the service of the petition, any party to the action may serve and file a response thereto." FRCP Rule 27 A (3) Response."(A) Time to file. Any party may file a response to a motion; Rule 27(a)(2) governs its contents. The response must be filed within 10 days after service of the motion unless the court shortens or extends the time." The Respondents motion was in default and should have been disregarded. Additionally SD statute 15-26A-16 "response to petition" states,"mailing and shall be deemed to be filed as of the date of mailing." Petitioner filed in time. The SD Supreme court order was an abuse of discretion, and violated Petitiones due process rights. Local practices can not change the filing date to reflect a filing fee payment if that was the case. "We think that the Clerk's receipt of the notice of appeal within the 30-day period satisfied the requirements of § 2107, and that untimely payment of the § 1917 fee did not vitiate the validity of petitioner's notice of appeal." Parissi v. Telechron, Inc. 349 U.S. 46, 75 S.Ct. 577, 99 L.Ed. 867. Furthermore numerous states have applied this same due process interpretation. The State of Florida ex rel. Moore v. Murphree 106 So.2d 430, "Failure to pay the filing fee affects only the public agency or official that is benefited thereby, and in no wise prejudices the adversary." National Bank v. Underwriters at Lloyd's, 382 P.2d

851 "The statutes can be said to intend that the solution to an unpaid filing fee is not to vitiate the document but to collect the fee * * * and that time of payment is secondary. Therefore the SD Supreme Court ruling should be overturned. Additionally the clerk should have promptly responded by email stating what fee was due. SD Statute 15-26A-4 states "and the required statutory filing fees unless exempt by law." The clerk had to inform Petitioners what that fee is. The SD Supreme Court dismissal order had further due process and abuse of discretion violations. The order states, "and from an order denying a motion for a new trial which is not an order appealable of right pursuant to SDCL 15-26A-3, now therefore, it is hereby Ordered that the appeal be and it is hereby dismissed." 16th day March, 2021." League of Women Voters, 468 U. S., at 373, n. 10 (internal quotation marks omitted); see FRAP 4(a)(4)(A)(iv) (A party's "time to file an appeal runs" from "the entry of the order disposing of the [Rule 59(e)] motion"). And if an appeal follows, the ruling on the Rule 59(e) motion merges with the prior determination, so that the reviewing court takes up only one judgment." See 11 Wright & Miller §2818, at 246; Forman v. Davis, 371 U. S. 178, 181 (1962). Still more, a Rule 60(b) motion "does not affect the [original] judgment's finality or suspend its operation" and is appealable as "a separate final order." Stone v. INS, 514 U. S. 386, 401. "Left unchecked, a Rule 60(b) motion threatens serial habeas litigation, while a Rule 59(e) motion is a one-time effort to point out alleged errors in a just-issued decision before taking a single appeal.". Banister vs Davis No. 18–6943 Ruling Syllabus page 3 para 1. "Where a court failed to observe safeguards, it amounts to denial of due process of law, court is deprived of juris." Merritt v. Hunter, C.A. Kansas 170 F2d 739. This is a clear violation of Petitioners 7th and 14th Amendment rights. "A departure by a court from those recognized and established requirements of law, however close apparent adherence to mere form in method of procedure, which has effect of depriving one of a constitutional right, is an excess of jurisdiction." Wuest v. Wuest, 127 P2d 934, 937. Osterneck v. Ernst & Whinney, 489 U. S. 169, 174 (1989). "{Only the disposition of that motion "restores th[e] finality" of the original judgment, thus, starting the 30-day

appeal clock."Moore's Federal Practices 60.33 at 508 states "Since, then, the power of a defrauded court to grant relief is a sweeping, plenary power that is not subject to any rigid time limitation as is a motion under 60(b)(3), supra, or to laches of a party, which normally precludes relief in an independent action, supra, it will be necessary at times to determine whether the fraud is fraud upon the court or some other species of fraud." While SD statute says 15.26A-3 Judgments and orders of circuit courts from which appeal may be taken (4) says "Any final order affecting a substantial right, made in special proceedings, or upon a summary application in an action after judgment." 15-26A-9. "When reviewing an order denying a new trial, the Supreme Court may review all matters properly and timely presented to the court by the application for a new trial." 15-26A-7.. "On appeal from a judgment the Supreme Court may review any order, ruling, or determination of the trial court, including an order denying a new trial, and whether any such order, ruling, or determination is made before or after judgment involving the merits and necessarily affecting the judgment and appearing upon the record." This court needs to restore Petitioners constitutional rights and further clarify federal and State statute solidity.

5. Another due process violation occurred when the S.D Circuit Court did not provide pro se Edward Dostal guidance on what is required when responding to the summary judgment motion. Edward Dostal did not file a separate undisputed fact document and therefore lost on a procedural error. The court "And, Mr. Dostal, I'm going to take your argument specifically as it relates to the required statement of material facts, because even though you're pro se, you are, by South Dakota law, presumed to have read and followed the Rules of Civil Procedure, so why should that not apply to you?" MR. DOSTAL: "I tried to follow everything that I can understand what to do for what the (inaudible) I can do. Ignorance, I know, is not something I (inaudible) claim, but (inaudible) I do." Transcript page 11 line 8-17. The Pro Se Litigant's Right to Notification of the Requirements of the Summary Judgment Rule, 55 Fordham L.Rev. 1109, 1132-35 (1987) "In several cases, for instance, the federal courts have ruled that pro se litigants must receive notice of the requirements of a summary

judgment motion under Rules 12(b)(6)." "...understandable to one in appellant's a pro se litigant's circumstances fairly to apprise him of what is required." "It must inform him not only of his obligation to respond but also of the consequences of not doing so." See, e.g., Hudson v. Hardy, 412 F.2d 1091, 1094 (D.C.Cir. 1968.) and Garaux v. Pulley, 739 F.2d 437, 439 (9th Cir. 1984); Moore v. State of Fla., 703 F.2d 516, 520-21 (11th Cir. 1983); Ham v. Smith, 653 F.2d 628, 630 (D.C.Cir. 1981); Barker v. Norman, 651 F.2d 1107, 1128-30 (5th Cir. 1981); Roseboro v. Garrison, 528 F.2d 309, 310 (4th Cir. 1975); Mitchell v. Inman, 682 F.2d 886, 887 (11th Cir. 1982). Additionally during the summary judgment hearing which was by phone Edward Dostal wanted to read a prepared statement to inform the circuit court of Basin's application for FERC regulation, but the court would not allow him to. This is a violation of his due process rights. The Court "Anything specifically that you want to add in regard to why I should not grant summary judgment on the PURPA claims that Mr. Lorge has not already covered? Edward Dostal "First off, there's a lot to it and I have a lot of reading here, and it's about 14 pages about this case. The Court " I'm not going to let you read -- Edward Dostal (Inaudible) --THE COURT: Hold on. I'm not going to let you read a 14-page document." Transcript Page 37 line 8-17 and the Court " And I'm not going to let you read 14 pages of stuff. Is there anything that you have not already stated in your brief that you want to summarize?" Transcript page 38 line 1-3. This was a denial of due process. "Protected Interest. Civil litigants have a protected interest in a meaningful opportunity to be heard. This interest is analytically distinct from any protected liberty or property interests that may underlie the litigant's cause of action or legal defenses. Litigants have invoked the interest in a meaningful opportunity to be heard in order to gain access to the courts in the absence of any potential deprivation of an underlying substantive interest." Laurence H. Tribe, American Constitutional Law § 10-18 at 753-54 (2d ed. 1988). 110 John E. Nowak, Ronald D. Rotunda, J. Nelson Young, Constitutional Law § 13.10 at 517 (3d ed. 1986)

6. FERC has made contradictory rulings stating that distribution Respondents avoided cost is Basin avoided cost, while also

ruling that a Class A member of Basin had to stop interfering with the distribution cooperatives OF obligations. "Finally, Delta-Montrose requests that, if relevant, the Commission find that the contract with Tri-State is a partial requirements contract, rather than a full requirements contract. Delta-Montrose states that the Commission has held that if the applicable contract is a full requirements contract then the avoided cost associated with a QF purchase are those of the supplier, whereas if it is a partial requirements contract then the avoided costs are instead those costs that the customer avoids when it purchases QF power....."FERC Tri-STate vs Delta-Montrose 151 FERC ¶ 61,238. paragraph 34. "Accordingly, in the instant case, Delta-Montrose is obligated by section 210 of PURPA and section 292.303(a) of the Commission's regulations to purchase power from any QF that can deliver its power to Delta-Montrose, regardless of the terms of Delta Montrose's contract with Tri-State. Furthermore, the terms of the contract cannot control the rights of a third party QF to sell power to any electric utility that it can deliver its electric energy to. Nothing in the Commission's regulations concerning calculation of avoided costs limits the authority of any electric utility, such as Delta-Montrose, and any QF, such as the Percheron QF, to agree to a rate for any purchase, or terms or conditions relating to any purchase, which differ from the rate or terms or conditions which would otherwise be required by the Commission's regulations." Order No. 69, FERC Stat. & Regs. ¶ 30,128 at 30,870. Petitioners provided the Tri-State case to the SD courts, but the court ruled "First determination I am going to make is that the other defendants as all requirements power customers of Basin, they're avoided cost rate is equal to Basin's avoided cost rate, and they are non-regulated entities under PURPA with the authority to determine their own avoided cost rates." (Transcript page 41 line 11-16). The small distribution Respondents buy from Western Area Power Administration and Basin passes through other sources of purchased generation, making Basin a supplemental supplier, as Basin's own website states, "Rural electric cooperative pioneers in the Missouri River basin created Basin Electric in 1961 to provide supplemental wholesale power to their distribution cooperatives."

http://cms.bepc.com/about-us/members. The SDPUC Oak Tree ruling covered South Dakota regulated utilities.

7. Therefore the ruling was incorrect. The 6th amendment's supremacy clause requires state courts to follow PURPA, and FERC rules. "All utilities must follow all FERC regulation. Section 210(f) required each state regulatory authority and nonregulated electric utility to implement the Commission's rules." 168 FERC ¶ 61,184 (Order 872) page 11, and FERC ORDER 872-A "In contrast, under the final rule, and PURPA more generally, the Commission sets rules for states and nonregulated electric utilities to implement." FERC ¶ 61,158 page 306, and 16 U.S. Code § 824a–3 - Section 210(f)(2)(a) (a) ....each nonregulated electric utility shall, after notice and opportunity for public hearing, implement such rule (or revised rule") The circuit circuit court also stated "....,and their only obligation was to develop the avoided cost rate consistent with FERC guidelines." The Respondents previous avoided rates avoided cost does not follow PURPA. The avoided rate was not based upon small distribution Respondents' average purchase avoided rate. The rate was based upon Basin Leland Olds Coal which has a lower avoided cost then their natural gas plants, and an RFP for long term rates which does not follow LEO QF law. "The Commission has also held that "requiring a QF to win a competitive solicitation as a condition to obtaining a long-term contract imposes an unreasonable obstacle to obtaining a legally enforceable obligation." Windham Solar LLC and Allco Finance Limited. 156 FERC ¶ 61,042 5. Also commensurate with Hydrodynamics, Inc., 146 FERC ¶ 61,193 (2014). And "FERC promulgated a rule requiring utilities to purchase electric energy from a qualifying facility at a rate equal to the utility's "full avoided cost," *i.e.*, the cost to the utility which, but for the purchase from the qualifying facility, would be incurred by the utility in generating the electricity itself or purchasing the electricity from another source.§ 210(b). Such rule plainly satisfies the requirement of § 210(b) that the rate not discriminate against qualifying cogeneration and small power production facilities. The full avoided cost is the rate for the power purchase rate. " thus provide for a utility to purchase electricity from a qualifying facility at the utility's "full avoided

cost." "Am. Paper Inst., 461 U.S. at 406; accord Indep. Energy Producers, 36 F.3d at 858. And PURPA Order 69 292.101 "The Commission added the term "incremental" to modify the costs which an electric utility would avoid as a result of making purchase from a qualifying facility. Under the principle. of economic dispatch, utilities generally turn on last and turn off first their generating units with the highest running cost. At any given time an economically dispatched utility can avoid operating its highest-cost units as a result of making a purchase from a qualifying facility." The laws were provided to the court. PURPA was not followed. The circuit court's lack of implementation of its imperative authority was a violation of PURPA and error in law precedence, and an abuse of discretion which requires this court to overturn the SD courts.

8. The SD Supreme Court Order dismissing the Petitioners motion for sanctions did not follow precedence from around the country, thereby requiring this court's final ruling. After the Petitioners motion for a new trial was submitted the Respondent attorneys had more than one month to correct their perjury and fraud which occurred during the motion for summary judgment hearing. Respondents chose not to therefore initiating Rule 11, Rule 8.4 and Rule 8.3. During the summary judgment hearing the Respondent's attorneys committed perjury and fraud by saying that the Petitioners never requested the avoided cost information before filing the lawsuit. Respondent attorney "I think part of what they have pointed to in support of that argument is unwillingness to provide data and information that they have claimed is required under the FERC regulations. So the fact that they never really asked for it, I think, undercuts the claim that Basin Electric was not dealing with -- Basin Electric and the defendants were not dealing with the plaintiffs in good faith." Summary judgment transcript page 20 line 2-9. Petitioners initial filing provided proof that in 2008, 2011, 2013, Petitioners asked for the avoided cost information. Yet the court stated. The court "The third claim is that the defendants did not negotiate in good faith. The record establishes that they, going to that particular issue, they did not request the relevant information, the specific information from the defendants before filing their complaint in this case, which goes to that

good faith argument." Transcript page 43 line 14-19. Secondly the Respondent attorneys said Petitioners never submitted power purchase agreements based upon the 2016 avoided cost information. Another lie. Petitioners submitted 19 power purchase agreements shortly after receiving the 2016 avoided cost information. After receiving the ppa's, Respondents replied by letter in 2017 stating "Assuming your project(s) are considered to be qualified facilities Basin Electric, on behalf of the members mentioned above, is prepared to enter into a power purchase agreement pursuant to PURPA and the FERC regulations at their avoided cost as that term is defined by PUPRA and the FERC regulations. As each of the nineteen (19) Power Purchase Agreements you have forwarded propose a power sales rate other than Basin Electric's avoided cost, those agreements are not in conformance with PURPA and the FERC regulations and are thus entirely unacceptable. On behalf of Rosebud, Grand Electric and Moreau-Grand, Prelude's demand that they each sign the proposed Power Purchase Agreements is rejected." signed by Michael Luce attorney. The motion for a new trial contained the evidence, but the circuit court ruled against Petitioners. Additionally the Respondents applied for FERC regulation and withheld this pertinent information from the court and Petitioners. Petitioners found the information a few days before the summary judgment hearing. The regulatory change is a rather big deal in PURPA. "suppression of a material fact which a party is bound in good faith to disclose is equivalent to a false representation." Leigh v. Loyd 74 Ariz. Making the undisputed facts document and beliefs and affidavits fraudulent. Only the Respondent's attorney's provided signed briefs and affidavits. The documents did not stipulate to the FERC Application, but rather stated that the Respondents were non regulated. Violating FRCP 56(h) and SD statute 15-6-56(g). Basin's website stated that Basin met a threshold where FERC rules had to be followed, so they applied for FERC regulation. Fraud upon the court' should, we believe, embrace only that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication."

Lockwood v. Bowles, D.C. 1969, 46 F.R.D. 625. "If an attorney is guilty of deceit or collusion or consents thereto with intent to deceive the court, judge or party, he shall forfeit to the injured party, treble damages to be recovered in a civil action..."N.Y. JUD. LAW § 487 (McKinney 2005) California court "[a] fraud claim against a lawyer is no different from a fraud claim against anyone else."Vega v. Jones, Day, Reavis & Pogue, 17 Cal. Rptr. 3d 26, 31 (Ct. App. 2004). Chambers v. NASCO, Inc., 501 U.S. 32 (1991) — "Although interpreting the district court's inherent power to sanction, not Rule 11, the Court rendered the relevant holding that a court's authority to sanction under its broad inherent power is not limited by the fact that more narrowly tailored procedural provisions, such as Rule 11 or section 1927, could govern the same conduct." and Willy v. Coastal Corp., 503 U.S. 131 (1992), "the Supreme Court decided that a federal court may impose Rule 11 sanctions notwithstanding that it is subsequently determined that the court lacked jurisdiction over the merits of a case." Ginsburg Dev. Cos., LLC v. Carbone, 926 N.Y.S.2d 156, 157–58 (App. Div. 2011) (noting that legal malpractice allegations predicated on fraud avoid the privity requirement); Credit Union Cent. Falls v. Groff, 966 A.2d 1262, 1271 (R.I. 2009) "Fraud is a well-settled exception to the privity requirement that historically bars nonclient recovery for attorney malpractice." 19 427 S.W.3d 47 (Ark. 2013). Nevada Law Journal [Vol. 16:57]. "Model Rule 8.4(c) broadly prohibits lawyers from engaging "in conduct involving dishonesty, fraud, deceit or misrepresentation." Nevada Law Journal [Vol. 16:57] Matsuura v. E.I. du Pont de Nemours & Co., 73 P.3d 687, 703 (Haw. 2003). And as it applies to summary judgment, Farmers State Bank v. Huguenin, 469 S.E.2d 34, 36--37 (Ga. Ct. App. 1996) "LaBelle filed a demurrer, arguing that he had no duty to truthfully disclose the defendants' insurance coverage to the Shafers and that the Shafers had not justifiably relied on any statements he made.....The litigation privilege generally does not protect a lawyer against liability for fraud. After concluding that the Shafers could sue LaBelle for fraud and that the trial court erred in sustaining LaBelle's demurrer without leave to amend, the Shafer court went on to hold that the Shafers could sue LaBelle for conspiring with Truckto defraud them."

Shafer v. Berger, Kahn, Shafton, Moss, Figler, Simon, & Gladstone, 0 131 Cal. Rptr. 2d 777 (Ct. App. 2003) Nevada Law Journal [Vol. 16:57]. "where one does speak he must speak the whole truth to the end that he does not conceal any facts which materially qualify those stated."not to defra. Cicone v. URS Corp., 227 Cal. Rptr. 887, 891 (Ct. App. 1986) Therefore this court needs to hold Respondents and their attorneys accountable.

9. Fraudulent concealment. This fraud was not stipulated prior, but the Respondents and their attorneys committed fraudulent concealment. The Respondents provided interrogatory answers on Oct 24th 2019. The discovery finally included Basin's natural gas facilities avoided cost, finally proving that the Basins Leland Olds coal plant was never the highest avoided cost facility. The Respondents' FERC application contained avoided cost for all of Basin's generation sources. "To establish fraudulent concealment, a plaintiff must prove that: (1) the defendant owed the plaintiff a duty to disclose a material fact; (2) the defendant failed to do so; (3) the defendant intended to defraud or deceive the plaintiff; (4) the plaintiff acted in justifiable reliance on the concealment; and (5) the plaintiff was damaged as a result.a material term." and Model Rule of Professional Conduct 1.2(d) provides that a lawyer "shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent." This court needs to hold Respondents and their attorneys accountable for their fraud. Petitioners have been harmed.

10. The Respondents' fraud and violations of PURPA require damages to be paid and yet the circuit court did not grant any, incorrectly stating that PURPA does not allow for damages, and ignoring all the other Respondents' illegal behavior. The summary judgment order "and that monetary damages are not awardable on claims arising under PURPA, and such claims are accordingly, dismissed with prejudice;" FERC stated the court's authority to grant damages in PaTu Wind Farm LLC vs Portland General Electric Company 150 FERC 61,032. "PáTu is a 9 MW net capacity wind farm located in Sherman County, Oregon. PáTu self-certified as a qualifying facility (QF) in 4 Docket No. QF06-17-002. FERC

held that "PáTu is essentially asking for damages resulting from a Portland General breach of contract. Under these circumstances, whether "reparations" are owed, and in what amount, is a matter best left to the Oregon Commission or an appropriate court."150 FERC ¶ 61,032 page 25 and 26 paragraph 57. Furthermore, "Civil actions founded on negligence or fraud require damages as an essential element." Lien v. McGladrey & Pullen, 509 NW2d 421, 423 (SD 1993). Based upon the Respondents' illegal acts the Sherman act was initiated. Petitioners provided Section 2 of the Sherman Act, 15. U.S.C. s 2. to the circuit court but no ruling was made, requiring this court to hold the Respondents to account, so no other wind farm developer has to deal with so much injustice ever again. Otter Tail Power Co. v. United States, 410 U.S. 366 (1973.). Otter Tail is a civil antitrust case filed at the Department of Justice under Section 2 of the Sherman Act, 15. U.S.C. s 2. The Supreme Court held "The promotion of self interest alone does not invoke the rule of reason to immunize otherwise illegal acts." 410 U.S at 369. "Further "activities which come under the jurisdiction of a regulatory agency nevertheless may be subject to scrutiny under the antitrust laws." "The record makes abundantly clear that Otter Tail used its monopoly power in the towns in its service area to foreclose competition or gain a competitive advantage, or to destroy a competitor, all in violation of the antitrust laws." "Otter Tail used its "dominance to foreclose potential entrants into the retail area from obtaining electric power from outside sources of supply." The cases were provided to the circuit court. This court needs to hold the Respondents accountable and make it clear that no utilities can provide false avoided cost information to any QF, thereby making Petitioners whole.

11. The summary judgment order said FERC was the place for further discovery. The Court "The other thing that I will say in regard to that, the – based upon the material, the arguments provided, and the authorities provided, I do determine that additionally, this, given the procedural posture of this case and the material that we are talking about, that failure to provide data would be an issue to be resolved by FERC." Page 43 line page 42 line 23-25 and page 43 line 1-4 "And the data issue in and of itself would be an issue that would fall under -- they

would be entitled to know more data than they would be entitled to through an action at the federal level. And so, therefore, that leads me to the conclusion that that is a claim that is not (inaudible) before this Court." transcript page 43 line 8-13. The Respondents had previously filed a motion to dismiss where the prior judge stated that Respondents had to provide discovery, making the summary judgment rule odd and in violation of FPA § 317, 16 U.S.C. § 825p "District Courts of the United States ... exclusive jurisdiction" over all enforcement actions. And PURPA § 210(g)(2), 16 U.S.C. § 824a-3(g)(2) Cogeneration and small power production, PURPA 210(g), entitled "Judicial Review and Enforcement," permits "any person" to "bring an action against any electric utility [or] qualifying small power producer ... to enforce any requirement" created by a state's implementation of PURPA. 18 C.F.R. § 292.601(b) (exempting only small power producers with a capacity of under 30 megawatts).

"Federal district courts have exclusive jurisdiction over implementation claims only; jurisdiction over "as applied" claims is reserved to state courts." Power Res. Grp., Inc., 422 F.3d at 235- 36. The circuit court order violated Federal PURPA requirements, State discovery procedure, and due process therefore this court needs to provide clarity.

12. The circuit court order also said Thomas Mattson's assignment of claim from Prelude to Thomas Mattson did not make him a party to the case, while the SD Supreme Court Order did not cite this as a reason for dismissal and ruled with Thomas Mattson as a party to the case. The circuit court was incorrect. The Respondents cited McKellips v. Mackintosh, 475 N.W.2d 926, 928-29 (S.D. 1991), "McKellips said he would personally loan Mackintosh $3,000 in exchange for a percentage of any award or settlement accruing at one percent per month." This hearing has no relation to McKellips. The Respondents "This statute has no application here, as it plainly applies only in the case of death of a plaintiff. Further, such a claimed assignment is void under the doctrines of maintenance and champerty." The Respondents were incorrect. "A thing in action arising out of the violation of a right of property or out of an obligation may be transferred by the owner.". Gilbert v. United Nat'l Bank, 436 NW2d 23, 25, "The

plaintiff, Margaret Barnes, is the assignee of the construction company and its surety and was substituted as plaintiff." Barnes v. Hampton, 252 NW2d 138, 139 "[I]t is fundamental that a valid cause of action must exist in the assignor insured before an assignee can prevail against the insurer." Berrington v. Williams, 52 CalRptr 772, 776 (CalCtApp 1966).

13. There also needs to be further clarity that attorney testimony is not a fact before the court.The Respondents' did not provide excerpt witness or expert documents, and only Respondents' attorneys signed affidavits. Not one single piece of prima facia evidence. No expert saying why the Petitioners expert witness avoided cost document calculations were incorrect. Yet during the summary judgment hearing the court asked for the Respondent attorney's opinion. Petitioners could not prepare for Respondents testimony. American Red Cross vs Community Blood Center of Ozarks, 257 F.3d859 (8th cir. 2001)"Attorney cannot be witnesses and council in the same case: statements of council, in brief or argument, are not facts before the court." There was no basis for the circuit court to agree with anything the Defendant presented. This court needs to clarify why attorney testimony can never be a fact before the court. And overturn the SD Courts.
14. Edward Dostlas' motion for a new trial dismissal reached ex parte violations, harming Edward Dostlas due process rights. On January 1st 2021 Thomas Mattson filed a motion for a new trial and an assignment of the claim form Prelude to Thomas Mattson. On Fri, Jan 22, 2021 at 12:05 PM. The Respondents filed Opposition to Thomas Mattson's Motion for a New Trial, and Respondents submitted a proposed dismissal order. On Fri, Jan 22, 2021 12:51 PM one hour later the court filed an order dismissing Thomas Mattson motion. On Jan 25, 2021 11:40 AM, Respondents sent an email with a new order with Edward Dostlas motion for a new trial included in the dismissal order. Later that day the court changed the order to include dismissal of Edward Dostlas' motion. Edward Dostals' motion had been filed January 27th 2020, almost one year prior. The Respondents did not file an opposition document. Edward Dostals motion arguments should have been seen as uncontested and granted in total. The court did not file any opinion or fact document relating to Edward Dostlas' motion,

and yet almost one year later the court and the Respondents wrote the dismissal order together. Edward Dostal did not have the opportunity to respond to anything the Respondents stated. The time for Respondents to submit arguments had passed. The circuit court should have seen Edward Dostlas' motion as undisputed facts. A due process violation. The court order: "On or about January 27, 2019 [2020], " Dostal has presented no meritorious grounds for a new trial or for any other relief under SDCL 15-6-59(a) or 15-6-60(b), or any other statute or common law. Having not previously ruled on Mr. Dostal's Motion for New Trial, that Motion is deemed denied, pursuant to SDCL § 15-6-59(b)." Additionally the court did not send the summary judgment order to Edward Dostlal, so on January 16th 2020 Edward Dostal went to the court looking for the order. Therefore the Rule 59 timeline was not met, but Rule 59 arguments were included to protect Edward Dostlas due process rights. Edward Dostal's motion also included SD statute 15-6-60(b) which was timely and required an order from the court and if desired an opposition document from the Respondents which was not filed. "when a procedural due process violation has occurred because of ex parte communications, such a violation is not subject to the harmless error test." Id. (first citing Sullivan, 720 F.2d at 1274; then citing Ryder, 585 F.2d at 488). "finding that ex parte contacts were not only unfair, but a denial of rights under due process clause of the Constitution)." "(the) taint of ex parte communications from an adversary vitiated the entire removal proceeding." Ryder, 585 F.2d at 486 (discussing Camero v. United States, 375 F.2d 777 (Ct. Cl. 1967) Therefore this court needs to hold the circuit court and the Respondents accountable for their ex parte violations and grant Edward Dostals motion as undisputed facts before the court.

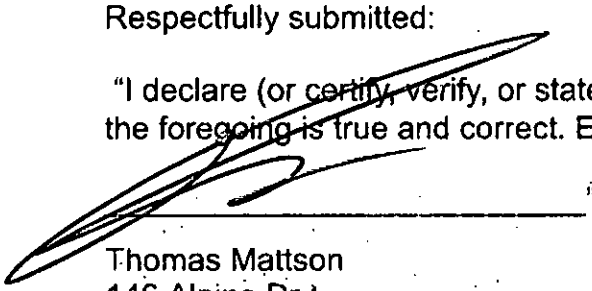
Conclusion

1. Petitioners are wind farm developers trying to run a business, who just want meaningful hearings with access to the courts of justice for a redress of our grievances and for the enforcement of Petitioners claims and rights under law. Due process is a right. The harm done by the Respondents is clear. Justice requires the law to be followed, and for the Petitioners to be made whole. This requires this court to hear

this case and overturn the SD Circuit Court and the SD Supreme Court, and order damages to be paid, and the QF ppa's to be signed, including the lost QF name plate in total. "Any other rule would enable the wrongdoer to profit from its wrongdoing at the expense of its victim....Failure to apply it would mean that the more grievous the wrong done, the less likelihood there would be of a recovery." Truett v. Chrysler Motors, 45 US 557, 566-67, 101 SCt 1923,1929,68 LEd2d 442 (1981).

Respectfully submitted:

"I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on 10/18//21



Thomas Mattson
146 Alpine Dr.
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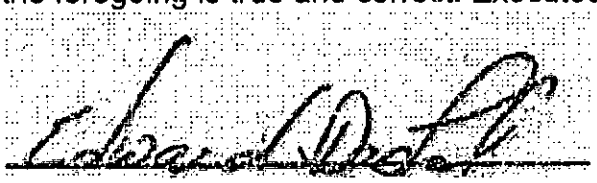
"I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on 10/18/21



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Appendix Attached
No opinions were provided, only orders.
Motion for Summary Judgment Order
Motion for a new trial Order
Motion for Appeal Order
Motion for Reconsideration Order
Motion for Sanctions Order.