

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

PRELUDE, L.L.C.,
and
EDWARD J. DOSTAL,
Plaintiffs and Appellants,
vs.
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 Appellees.

ORDER DENYING APPELLANTS'
MOTION FOR SANCTIONS

#29578

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

MAY 17 2021

Shirley A. Johnson-Lund
Clerk

Appellants having served and filed a motion and affidavit in support for sanctions in the above-entitled matter, and no response having been served and filed thereto, and the Court having previously dismissed the appeal for lack of jurisdiction, the Court determines the motion for sanctions is without merit, now, therefore, it is

ORDERED that the motion be and it is hereby denied.

DATED at Pierre, South Dakota, this 17th day of May, 2021.

BY THE COURT:

ATTEST:

[Signature]
Clerk of the Supreme Court
(SEAL)

[Signature]
Steven R. Jensen, Chief Justice

PARTICIPATING: Chief Justice Steven R. Jensen and Justices Janine M. Kern,
Mark E. Salter, Patricia J. DeVaney and Scott P. Myren.

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

PRELUDE, L.L.C.,

and

EDWARD J. DOSTAL,
Plaintiffs and Appellants,

vs.

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 Appellees.

ORDER DENYING MOTION
FOR RECONSIDERATION OF
DISMISSAL OF APPEAL

#29578

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

APR 16 2021

Shirley A. Johnson-Lund
Clerk

The Court having by order of March 16, 2021, dismissed the appeal taken in the above-entitled matter, and appellant having served and filed a motion for reconsideration of dismissal of appeal, and no response having been served and filed thereto and the Court having considered the motion and being fully advised in the premises, now, therefore, it is

ORDERED that the motion for reconsideration of dismissal of appeal be and it is hereby denied.

DATED at Pierre, South Dakota, this 16th day of April, 2021.

BY THE COURT:

ATTEST:

[Signature]
Clerk of the Supreme Court
(SEAL)

[Signature]
Steven R. Jensen, Chief Justice

PARTICIPATING: Chief Justice Steven R. Jensen and Justices Janine M. Kern,
Mark E. Salter, Patricia J. DeVaney and Scott P. Myren.

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

MAR 16 2021

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

Shirley A. Jameson-Fergel
Clerk

* * * *

PRELUDE, L.L.C.,

and

EDWARD J. DOSTAL,
Plaintiffs and Appellants,

vs.

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 Appellees.

ORDER DISMISSING APPEAL

#29578

It appearing to the Court that notice of appeal in the
above-entitled matter was filed with the trial court on March 5, 2021,
more than 30 days after the entry of the judgment and from an order
denying a motion for 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.

DATED at Pierre, South Dakota this 16th day of March, 2021.

BY THE COURT:

ATTEST:

Steven R. Jensen
Steven R. Jensen, Chief Justice

Shirley A. Jameson-Fergel
Shirley A. Jameson-Fergel
Clerk of the Supreme Court

By: *David J. Francis*
Chief Deputy Clerk
(SEAL)

STATE OF SOUTH DAKOTA)
 : SS
COUNTY OF TRIPP)

IN CIRCUIT COURT

SIXTH JUDICIAL CIRCUIT

PRELUDE, L.L.C.,

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.

61CIV15-000050

**ORDER DENYING MOTIONS
FOR NEW TRIAL**

On or about January 1, 2021, Thomas Mattson ("Mattson") "for the Plaintiffs," filed and served a document that he captions as a "Motion for New Trial" after the Court's Order and Judgment granting the Defendants' Motion for Summary Judgment on or about January 2, 2020. On or about January 22, 2021, Defendants filed and served their opposition to the motion.

Mattson is not a party to this proceeding, and the alleged Assignment of a Claim for Damages does not make him a proper party. Therefore, he has no standing to file the

Motion, and the Court has authorized its placing in the file solely for completeness of the record.

Even if Mattson were a proper party, a Motion for New Trial is not timely, and he has presented no meritorious grounds for relief from judgment under SDCL 15-6-60(b) or any other statute or common law.

Therefore, after review of the motion, attachments, response, and entire file herein, the Motion for New Trial Submitted by Thomas Mattson, for the Plaintiffs is DENIED. This Order regarding Mattson's Motion for New Trial amends an Order entered on January 22, 2021, which contained a clerical error in party reference.

On or about January 27, 2020, Plaintiff Edward Dostal filed a Motion for New Trial and Motion for Partial Judgment to Establish the Avoided Cost Rate based Upon Plaintiffs Legally Enforceable Obligation. 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. His motion was deemed denied twenty days after its filing pursuant to SDCL § 15-6-59(b) and is DENIED in its entirety.

Dated this 25th day of January, 2021.

BY THE COURT:

Bobbi J. Rank

Bobbi J. Rank
Sixth Judicial Circuit Court

State of South Dakota } ss
County of _____ }
Filed in this office

JAN 27 2021

Jodi Carlson
Clerk of Courts

By _____

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF TRIPP)

IN CIRCUIT COURT

SIXTH JUDICIAL CIRCUIT

PRELUDE, L.L.C.,

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.

61CIV15-000050

ORDER AND JUDGMENT

This matter having come before the Court on Defendants' Motion for Summary Judgment, and the parties having appeared personally or through counsel at the telephonic hearing on December 27, 2019, and the Court having reviewed the motion, briefs, affidavits and other materials submitted in support of Plaintiffs' and Defendants' respective arguments, and having issued its ruling orally at said hearing, it is hereby

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; it is hereby further

ORDERED, ADJUDGED AND DECREED that Defendants' Motion for Summary Judgment as it pertains to Plaintiffs' state law claims of defamation and tortious interference with business relations as set forth in their Complaint, is hereby granted, insofar as Plaintiffs acknowledged and agreed that such claims could not withstand summary judgment, and such claims are accordingly, dismissed with prejudice; it is hereby further

ORDERED, ADJUDGED AND DECREED that Defendant's Motion for Summary Judgment as it pertains to Plaintiffs' claims brought under federal law, the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. § 824a-3 ("PURPA"), as set forth in their Complaint, is hereby granted, insofar as Plaintiffs have failed to adduce any evidence supporting such claims, and that monetary damages are not awardable on claims arising under PURPA, and such claims are accordingly, dismissed with prejudice; it is hereby further

ORDERED, ADJUDGED AND DECREED that Defendants are entitled to judgment as a matter of law on all of Plaintiffs' claims; it is hereby further

ORDERED, ADJUDGED AND DECREED that Defendants shall have judgment against Plaintiffs for their costs and disbursements herein in the amount of \$ _____, such costs and disbursements to be taxed by the Clerk of this Court in the amount inserted herein and in such sum as shall by law be allowed, and such sum shall stand as

61CIV15-000050

judgment in favor of Defendants and against Plaintiff, Prelude, L.L.C.

Signed: 1/2/2020 10:55:59 AM

BY THE COURT:

Bobbi J. Rank

Honorable Bobbi J. Rank
Presiding Circuit Court Judge

Attest:

Cihak-Brozik, Sally
Clerk/Deputy

