

IN THE SUPREME COURT

OF THE

STATE OF SOUTH DAKOTA

\* \* \* \*

PRELUDE, L.L.C., ) ORDER DENYING APPELLANTS'  
and ) MOTION FOR SANCTIONS  
EDWARD J. DOSTAL, ) #29578  
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. )  
-----  
SUPREME COURT  
STATE OF SOUTH DAKOTA  
FILED  
MAY 17 2021  
*Chief Justice*  
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]*  
Steven R. Jensen, Chief Justice

Clerk of the Supreme Court  
(SEAL)

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., ) ORDER DENYING MOTION  
and ) FOR RECONSIDERATION OF  
EDWARD J. DOSTAL, ) DISMISSAL OF APPEAL  
Plaintiffs and Appellants, ) #29578  
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. )  
-----

SUPREME COURT  
STATE OF SOUTH DAKOTA  
FILED

APR 16 2021

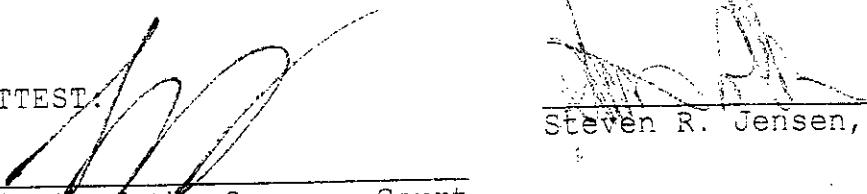
*Chief Justice*  
Clerk

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

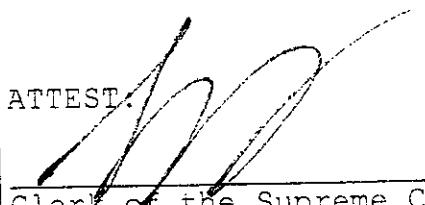
ORDERED that the motion for reconsideration of dismissal of appeal be and it is hereby denied.

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

BY THE COURT:

  
Steven R. Jensen, Chief Justice

ATTEST:

  
Clerk of the Supreme Court  
(SEAL)

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

*Shirley A. Jameson-Fergel*  
Clerk

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

\* \* \* \*

PRELUDE, L.L.C.,	)	ORDER DISMISSING APPEAL
	)	
and	)	#29578
	)	
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.	)	
	)	

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, Chief Justice

Shirley A. Jameson-Fergel  
Clerk of the Supreme Court

By: *Shirley A. Jameson-Fergel*  
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 }  
County of \_\_\_\_\_ } ss  
Filed in this office

JAN 27 2021

*Jodi Calhoun*  
Clark of Courts  
By \_\_\_\_\_ Dated \_\_\_\_\_

STATE OF SOUTH DAKOTA )  
COUNTY OF TRIPP )  
ss

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

