

Bond Case Briefs

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UTILITIES - SOUTH DAKOTA

Pesall v. Montana Dakota Utilities, Co.

Supreme Court of South Dakota - November 4, 2015 - N.W.2d - 2015 WL 6750305 - 2015 S.D. 81

Utility and power company applied for permit to construct a high-voltage electrical transmission line. Farmer objected because he was concerned that excavating and moving soil to construct the project might unearth and spread a crop parasite. Public Utilities Commission granted permit on conditions, including condition to identify and mitigate the potential parasite problem. Farmer sought judicial review. The Circuit Court affirmed. Farmer appealed.

The Supreme Court of South Dakota held that:

- Commission did not delegate its regulatory authority to applicants, and
- Commission did not exceed twelve-month time limit for rendering complete findings on the application.

Decision to grant permit to construct high-voltage electrical transmission line subject to crop parasite mitigation conditions, rather than requiring utility company and power company to reapply in order to provide more specificity regarding mitigation proposal, was expressly authorized by legislature and within Public Utilities Commission's area of expertise and therefore within the Commission's discretion.

Modified condition of permit to construct high-voltage electrical transmission line, requiring applicants to identify and mitigate potential crop parasite problem, did not improperly delegate Public Utilities Commission's authority to a private party. On the contrary, the permit and the Commission's modifications of the condition reflected that the Commission retained its authority to make the ultimate decision regarding the crop parasite mitigation, and applicants did not have ultimate authority to choose final mitigation plan.

Public Utilities Commission did not exceed statutory twelve-month time limit for rendering complete findings on application for permit to construct high-voltage electrical transmission line, which was subject to crop parasite mitigation conditions, even though it did not order a specific mitigation plan within the twelve-month statutory period. Fact that the Commission retained jurisdiction to enforce its conditions did not mean it had failed to render complete findings on the permit.