

Bond Case Briefs

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EMINENT DOMAIN - SOUTH DAKOTA

Montana-Dakota Utilities Co. v. Parkshill Farms, LLC

Supreme Court of South Dakota - December 13, 2017 - N.W.2d - 2017 WL 6380844 - 2017 S.D. 88

Public utilities brought condemnation action to obtain permanent easements to construct a power line across four parcels of land.

The Judicial Circuit Court granted condemnation and, after a jury trial, awarded \$95,046 to landowners as compensation. Landowners appealed.

The Supreme Court of South Dakota held that:

- The nature of utilities' proposed use of desired easements was public;
- Utilities did not abuse their discretion in determining that desired easements were necessary; but
- A property owner is entitled to compensation for any right explicitly taken by a condemning authority, regardless of whether the condemning authority ever uses such right.

The nature of public utilities' proposed use of desired easements for a power line over four parcels of land was public, as required for utilities to obtain easements by eminent domain; as public utilities, they were required by law to furnish adequate, efficient, and reasonable service, utilities generally could not fail to provide service to a community without permission from the Public Utilities Commission, and federal regulations required utilities to provide open access to their transmission lines under nondiscriminatory rates to others in the market.

Utilities did not abuse their discretion in determining that permanent easements over four parcels of land were necessary for the purpose of construction, operation, and maintenance of an electrical transmission line, despite argument that utilities sought to take a variety of rights that they had no intention of using and that easements for the same power line project in a neighboring state were limited to 99 years; electricity was a commodity in widespread demand not only presently but for the foreseeable future, easements at issue simply accounted for changing circumstances and evolving technology, and objecting landowners necessarily retained some rights to the easement area.

A property owner is entitled to compensation for any right explicitly taken by a condemning authority, regardless of whether the condemning authority ever uses such right.