

No. 12889

IN THE SUPREME COURT OF THE STATE OF MONTANA

1974

MONTANA BOARD OF NATURAL RESOURCES et al.,

Plaintiffs and Appellants,

-vs-

THE MONTANA POWER COMPANY, a Corporation,

Defendants and Respondents.

Appeal from: District Court of the First Judicial District,
Honorable Peter Meloy, Judge presiding.

Counsel of Record:

For Appellants:

Donald D. MacIntyre argued, Helena, Montana

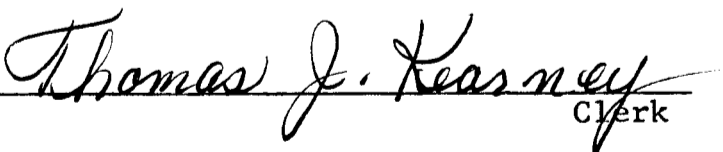
For Respondents:

Thomas Kelley argued, Billings, Montana
William Coldiron argued, Butte, Montana
John Carl appeared, Butte, Montana

Submitted: November 12, 1974

Decided: DEC 4 - 1974

Filed: DEC 9 - 1974


Clerk

PER CURIAM:

On October 23, 1974 plaintiffs, pursuant to Rule 40, Montana Rules of Appellate Civil Procedure, applied to this Court seeking reinstatement of an injunction which had been dissolved by the district court of Lewis and Clark County, pending appeal and final decision by this Court. The controversy here arose as follows:

On June 14, 1974 plaintiffs instituted this action, Civil Cause No. 37972 in the district court, by filing a complaint for declaratory judgment and injunction against defendant. Plaintiffs sought a ruling declaring defendant's proposed 230 kilovolt transmission line from Billings to Great Falls, Montana, (the line), subject to the Montana Utility Siting Act of 1973, sections 70-801-70-823, R.C.M. 1947, and an order temporarily restraining defendant from constructing the line. District Judge Peter G. Meloy issued the temporary restraining order and set a show cause hearing on the matter.

On July 3, 1974 defendant answered the complaint stating the line was under construction prior to January 1, 1973 and therefore was specifically exempt from the Montana Utility Siting Act under section 70-811 of that Act. An evidentiary hearing was held the same day. The parties were given additional time to file further briefs.

On September 4, 1974 Judge Meloy found that the line was within the exception provided by section 70-811, R.C.M. 1947, and concluded that the temporary restraining order should be dissolved. Accordingly, judgment in favor of defendant and against plaintiffs was entered on September 26, 1974.

On October 4, 1974 plaintiffs filed a notice of appeal and moved the district court under Rule 7(a), Montana Rules of Appellate Civil Procedure, to stay execution of the judgment. This motion was denied on October 7, 1974, whereupon plaintiffs made application to this Court.

By an order dated October 24, 1974, this Court set the matter

for adversary hearing on November 12, 1974. Hearing was had, and after examining the record and considering the arguments of both parties, this Court finds, as did the district court, a total absence of facts in the record to support plaintiffs' allegations that discontinuance of the injunction will result in irreparable injury.

The relief sought is therefore DENIED.