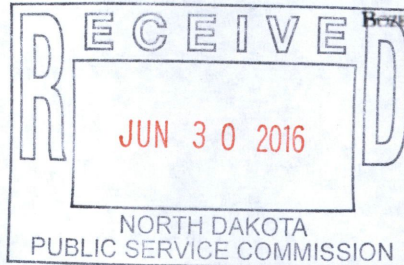


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June 30, 2016

North Dakota Public Service Commission
600 East Boulevard Avenue, #408
Bismarck, ND 58505
ndpsc@nd.gov

via First Class Mail and email

Re: Dahl Basin Electric Construction

Dear Members of North Dakota Public Service Commission:

I am writing in regards to two of my firms' clients, Nathan and Nevin Dahl. The Dahl brothers own adjoining ranches near the North Unit of Teddy Roosevelt National Park in McKenzie County North Dakota. Last summer, Basin Electric constructed an electrical transmission line across their properties. The Dahls asked me to write to you based on the comments made by the Commission during other hearings last year where you told members of the public who were commenting that they could come back to the Public Service Commission if there were problems. The Dahl brothers have had, and continue to have, problems relating to Basin Electric's construction activities. They have sought help from Basin Electric and received a litany of excuses and brushoffs. The damage to their property is not the kind where a court would provide a huge sum of money as damages, it is a potentially worse kind, where they no longer feel as if they have control over what occurs on their property.

I. Dahl Properties and Location of Line

The Dahl properties are located on the east side of Highway 85, a few miles north of the Little Missouri River. Because of the location of the North Unit of Teddy Roosevelt National Park to the southwest and substantial federal land to the east, these properties are constantly being utilized for energy infrastructure. Despite the intense industrialization of this part of McKenzie County, the Dahls have successfully worked with energy companies to avoid placing any pipelines or power lines within the pasture that they refer to as the "home place." The home place was a rare mixture of pasture and cropland that was not crossed by any public roads and had a unique view-shed that was unusually pristine. Because of this, the Dahls vehemently opposed Basin's siting of the line through the heart of the home place. Rather than merely being obstructionist however, the Dahls obtained a separate siting one mile to the west which they offered to provide free of charge to Basin. Basin repeatedly refused to change the siting of their line away from the home place, claiming a need to provide a buffer between

the existing WAPA line and its new line. This seems disingenuous as the Basin line parallels and crosses the WAPA at many points throughout the route.

II. Trespass

Basin Electric only obtained legal access to the Dahl properties after initiating eminent domain proceedings against them. Before the initiation of eminent domain proceedings, the Dahls refused to allow any access to Basin for either survey or archeological reasons. On June 23, 2015, Basin received access through an order of District Court Judge Robin Schmidt in North Dakota District Court.

Despite the denial of access, Basin trespassed on the Dahl properties to conduct an archeological study. Basin's own site form shows that they recorded the archeological study on May 3, 2014, before the order granting access was issued. Basin is either lying about trespassing or lying about conducting an archeological study.

NDCRS HISTORICAL ARCHEOLOGICAL SITE FORM
PAGE 1

Field Code MAC-MK24-B

SITS# 32 MZ 2836

SITE IDENTIFICATION

Map Quad Lone Butte NW
Map Quad _____

Site Name _____
Site Name _____

Subsection:
1 = N¼
2 = E½
3 = S½
4 = W¼
5 = NE¼
6 = SE¼
7 = SW¼
8 = NW¼

LTL TWP 148 R 99 SEC 13 QQQ 7 QQ 7 Q 5
LTL TWP _____ R _____ SEC _____ QQQ _____ QQ _____ Q _____
LTL TWP _____ R _____ SEC _____ QQQ _____ QQ _____ Q _____
LTL TWP _____ R _____ SEC _____ QQQ _____ QQ _____ Q _____

UTM 5277624 N ZONE 13N
UTM 632547 E NAD 1927 NAD 1983

SITE DATA

FEATURE TYPE

CM Scatter
 Chimney
 Depression
 Dump
 Earthworks
 Fortification
 Foundation
 Grave
 Hearth
 Machinery
 Quarry/Mine
 Rock Art
 Trail
 Wreck
 Other

CULTURAL MATERIAL

Bone
 Ceramics
 Charcoal
 Cloth
 Faunal Remains
 Fire-Cracked Rock
 Floral Remains
 Glass
 Hide, Hair, Fur
 Human Remains
 Masonry
 Metal
 Plastic
 Rubber
 Shell
 Wood
 Other

40 Site Type
26 Context
750 Site Area (m²)
Cultural Depth _____
Depth Indicator _____
1 Basis for Dating
Occupation Date(s)
Begin _____
End _____
3 CM Density
Isolated Find _____

ENVIRONMENT

Landform 1 3 Landform 2 15 Slope/Exposure 9 Ecosystem 7
Landform 1 _____ Landform 2 _____ Slope/Exposure _____ Ecosystem _____
Elevation 710 m Drainage System Little Missouri River
View Degree 2 View Distance 4
Distance to Permanent Water 35 m Permanent Water Type 3
Distance to Seasonal Water 35 m Seasonal Water Type 3

CRM

Ownership 3 Fieldwork Date 5/3/2014 Test/Probe _____ Excavation _____
Site Condition 4 Collection 1 Management Recommendation 1

Additional Information: Site: historic depression and CMS

SHSND USE

Area of Significance _____ Ecosone _____ Verified Site _____ CR Type _____
Area of Significance _____ Ecosone _____ Non-Site _____
Area of Significance _____ Ecosone _____

Recorded By M. Kinsey Date Recorded 5/3/2014
(First Name & Last Name) (mm/dd/yyyy)

Instructions to complete a digital version of this form: (1) Download a copy to your hard drive; (2) Open the saved blank copy; (3) Fill out the form; (4) Use the Save As command to rename the form appropriately and save; (5) Print and submit to SHSND.

III. Construction Access

After the eminent domain matter was litigated at great expense to the Dahls, it became apparent that Basin would not be able to construct the line utilizing only the easement area for construction access. This is the case because of several wetlands and rough terrain within the easement area.

The parties eventually settled the eminent domain action. The Dahls settled because they wished to avoid the cost of trial where they had already lost the issue most important to them – the integrity of the home place. Additionally, the Dahls were inclined to settle so they could have control and have input into where Basin's construction access would be located.

The construction access provided by the Dahls was by definition temporary and for use during the period of construction. Despite this, Basin's recent activities on their line, the first since November of last year, are occurring off the easement and within the construction easement. Either Basin is still constructing their line, or they are breaching their agreement for temporary access.

IV. Destructive Construction Practices

a. Rolling Topsoil

The Dahls provided Basin with construction access through the side of a cultivated field, out of the easement corridor, to avoid having compaction issues through the middle of a wheat field. Before utilizing the construction corridor, Basin rolled a layer of topsoil off the cultivated, despite instruction from the Dahls to leave the topsoil in place. Basin additionally agreed to bring in additional topsoil to supplement areas wrecked by the tower construction prior to reseeding. That has not happened.

b. Multiple Roads

Because of the issues with construction access, the Dahls provided Basin with construction access that was outside the easement area. This access was communicated to Basin clearly on a map that was signed by the parties upon settlement. In the spirit of cooperation, the Dahls agreed to "reasonable deviations" from the mapped access. Instead of utilizing just the mapped access, Basin used the mapped access and any other access it deemed necessary. Further, before Basin paid the Dahls the settlement amount, it first demanded that the Dahls sign additional "exclusive" access agreements. Only upon further intervention by this office did Basin pay the Dahls and agree to stick to their original, signed agreement.

This photo shows multiple roads flagged. The leftmost road was not included in the agreed upon access.



The following photos show other examples of Basin driving all over, rather than sticking to the agreed upon access.



c. Widening Existing Roads

Even where Basin did stick to the access agreed upon by the Dahls, they often drove off the existing roads, causing extensive widening, as shown in the following photos.





d. Wrecking Water Crossing

Because of the additional construction access provided by the Dahls, Basin was supposed to be limited to a single water crossing. That crossing was constructed prior to Basin's work and was part of the Dahls access to their pasture and hay land. Without consulting the Dahls, Basin narrowed and raised the crossing, making it unsuitable for agricultural machinery. Basin's construction also caused the culverts to be pounded well below the water line, insuring that they will rust out prematurely.





e. Tracking through Wetland

Because of the additional access provided to Basin, it was supposed to stay out of one area of wetland on the Dahl properties. The Dahls offered to allow Basin to construct a crossing, but Basin refused. Despite this avoidance area being a special consideration in providing additional access, Basin drove at least one bulldozer directly through the wetland, as shown in the photos below.





f. Tracking through Archeological Site

The following photos show where Basin ignored its own archeological site staking and moved its equipment through a posted archeological area. These photos also show that additional roads were also driven on around the staked area, showing a special level of piggishness.





g. Theft of Scoria

Basin or its contractor also stole a pile of scoria stockpiled near the easement by the Dahl. The pile shown in the photo below was taken by Basin or its contractor. While Basin's contractor did ultimately pay for the scoria, it is another example of the disrespect shown for the Dahls' property.



h. General Mess

This final set of photos show the general mess left on the Dahl properties by Basin including trash, disturbed topsoil, clay left on the topsoil, and slash which was not removed.







V. Inaccurate Tree Count

Before construction activities, the Nevin Dahl received an email containing an estimated tree count from Basin Electric:

From: Casey Jacobson [<mailto:CJacobson@bepc.com>]
Sent: Monday, September 14, 2015 7:27 AM
To: nnd@restel.com
Cc: Kelly Suko <KSuko@bepc.com>
Subject: Tree Count

Nevin: Here is the tree count. The survey was done on August 20th. These are tree and shrubs that are in the 150 ROW. They may not be all removed so we will do a post construction survey and see what has been removed That will happen next spring or late fall depending on the weather and construction. Let me know if you have questions about it.

As Kelly said, no cultural resources were found but I'll get you the email from our consultant on that. I'm not sure what the flagged areas are. I am looking into.

Casey

From: Clayton Derby <cderby@west-inc.com<<mailto:cderby@west-inc.com>>>
Date: September 11, 2015 at 2:20:08 PM CDT
Cc: Cris Miller <cmiller@bepc.com<<mailto:cmiller@bepc.com>>>
Subject: [WARN] Re: FW: Easement issues Trees and Archeological findings
Cris

Here is the estimated number of trees and shrubs within the survey corridor.

Name	Number
American elm	98
American plum	7
Beaked hazelnut	166
Black hawthorn	2
Box elder	2
Canadian gooseberry	6
Chokecherry	464
Common juniper	8
Creeping juniper	10

Golden Currant	1
Green ash	88
Juneberry	79
Peachleaf willow	4
Plains Cottonwood	1
Quacking aspen	23
Rocky Mountain juniper	9
Round-leaved hawthorn	6
Russian olive	7
Shrubby Cinqufoil	4
Siberian elm	2
Silver buffaloberry	246
Silver sagebrush	91
Skunkbush sumac	150
Tatarian honeysuckle	8
Unknown Rose	6
Western snowberry	70

Clayton Derby
Senior Manager / Wildlife Biologist

Environmental & Statistical Consultants
4007 State Street, Suite 109
Bismarck, ND 58503
(701) 250-1756
(701) 426-5072 Cell
(701) 250-1761 Fax
cderby@west-inc.com <<mailto:cderby@west-inc.com>>
www.west-inc.com <<http://www.west-inc.com/>>

Mr. Derby's initial estimated count contains 1559 trees. After the construction activities, meaning after the trees had been removed and most of the slash, branches, and trunks were eliminated from the property, Basin sent the Nevin Dahl a letter claiming that only 370 trees had been removed. Nevin Dahl disputes that count as far too low.



February 25, 2016

Nevin Dahl
1431 125th Ave NW
Waford City, ND 58854-9232

Dear Landowner:

As a part of the Basin Electric's Transmission Line Project, we are required by the North Dakota Public Service Commission (ND PSC) to quantify the trees and shrubs removed during the construction of our Project.

The inventory for your parcel(s) indicate the following trees and shrubs were removed due to our construction activity:

Number of Trees & Shrubs	Replacement 2:1
370	740

VI. Recent Access

As recently as a few weeks ago, Basin has returned to the Dahl properties to conduct additional work. This normally would be a good sign that perhaps additional reclamation was going to be conducted. However, that does not appear to be the case, and in any event, Basin accessed the property by driving over planted crops.



Beyond driving over the crops, Basin drove through the mud puddle shown below and created deep ruts in native pasture. They have not attempted to remedy this. It is completely unnecessary to continually create new tracks through the Dahl's pasture and to make an unnecessary mess every time Basin accesses the properties. Further, after these crews left, Nevin Dahl had to spend time cleaning up trash left behind.



VII. Conclusion

The Dahl brothers do not know how to get Basin to respect their property rights and to treat the land with a modicum of respect. The courts in western North Dakota are already overburdened, and, frankly are not set up to handle these types of problems. The Dahl brothers ask that you investigate Basin's activities on their land and use your authority, persuasive or otherwise, to assist them. The North Dakota Century Code puts companies like Basin Electric in a position of great power over agricultural producers like the Dahls. The Dahls feel, as do I, that the only balance on that power is the effective regulation of the companies like Basin by the Public Service Commission.

Respectfully,


Matt J. Kelly

MJK/sfr