

June 29, 2016

Darrell Nitschke, Executive Secretary
Public Service Commission
State Capitol
Bismarck, ND 58505-0480

Via email: dnitschk@nd.gov

Re: Oliver County v. Minnkota Power Cooperative, Inc. – Informal Complaint
Our File No.: 021130.16005

Dear Mr. Nitschke:

Please accept this as Minnkota Power Cooperative, Inc.'s ("Minnkota") Response to the Informal Complaint by Oliver County, dated June 1, 2016. Minnkota objects to the allegations that it has violated North Dakota law by the placement of the 345-kilovolt transmission line and structures described in the Informal Complaint.

Facts and Argument

In May 2009, Minnkota met with the Oliver County Commissioners to discuss the proposed 345-kilovolt transmission line that would pass through Oliver County en route from Center, North Dakota to Grand Forks, North Dakota. At this time, Minnkota presented information for a one-mile wide corridor as a reference to show where the transmission line would likely be placed. In October 2010, Minnkota again met with Oliver County Commissioners to present and discuss an approved 1000-foot corridor, which provided more detailed information as to where the transmission line would run.

In July 2011, Minnkota met with the Oliver County Planning and Zoning Commission regarding the 1000-foot corridor, and provided a map of the proposed corridor. That map, dated April 15, 2011, is attached and shows the centerline of the 1000-foot corridor in red. The map does not show a specific route with construction details, but was intended to provide a general idea of where the transmission line would eventually run by showing the centerline of the 1000-foot corridor. There had been no approval of a route from the Public Service Commission (PSC) at that time, nor had Minnkota obtained easements from the relevant landowners at that time. The actual route of the transmission line was different from the proposed centerline on the April 15, 2011 map, mostly due to specific landowner requests and easement acquisition issues. However, a review of the attached route map clearly establishes that Minnkota anticipated the line may have ended up being 33 feet north of a section line, or 44 feet north of a section line, or 63 or 64 feet north of a section

line. This same April 15, 2011 map was attached as an exhibit to Minnkota's application for a conditional use permit. Oliver County was advised and was on notice that Minnkota may place the transmission line at any location within the route corridor, including just outside of the County's section-line road right-of-way easements in some places.

Oliver County argues in its Informal Complaint that the map approved by Oliver County proposed that the transmission line would be between 136 and 223 feet south of the section line in the relevant two-mile stretch. However, the map shows only the proposed centerline of the 1000-foot corridor, and Minnkota did not yet have a specific route because it had not obtained a route permit or received permission from landowners. As such, the specific as-built alignment within that 1000 corridor was not limited to the 87 foot corridor suggested by Oliver County in its Informal Complaint. In fact, the construction alignment within the 1000 foot corridor was still subject to modifications due to terrain and landowner requests.

In August 2011, Minnkota attended the Oliver County Commissioners' meeting, where the application for the conditional use permit was approved. No questions were asked regarding the distance of the structures from any road or section lines. While the "file" was referenced regarding the location for the permit, that reference is to the application with the April 15, 2011 map, which indicated the centerline of the 1000-foot corridor. That 1000-foot corridor was approved by Oliver County when it issued a conditional use permit based upon that corridor. The conditional use permit did not place any conditions on Minnkota other than compliance with County regulations. The permit states:

With the understanding that the applicant will satisfy all conditions set forth in the Oliver County Zoning Ordinance and the applicant will satisfy any additional conditions deemed necessary by the Board of County Commissioners. Failure of the applicant to comply with these conditions will constitute a violation of the ordinance under section 18 (Enforcement) and all penalties under section 18.3 (Penalties) apply.

As can be seen from the exhibits attached to the Informal Complaint, the conditional use permit was very general and vague. The conditional use permit did not require Minnkota to return to the County for approval for the specific, constructed route as the actual alignment within the 1000 foot corridor was established. Oliver County has not alleged that the conditional use permit was violated in any way, nor is there any evidence that the conditional use permit was ever violated. Oliver County does not allege that the permit or County regulations were violated, but that North Dakota law was violated because Minnkota purportedly did not specifically obtain permission to construct the transmission line within 75 feet of the centerline of the County Highway in the location complained of.

As stated, the route that had been previously submitted to the Oliver County Commission was the proposed 1000-foot corridor that was designated before Minnkota sought approval of the route from the PSC, and before easements had been obtained from landowners. Oliver County attempts

to minimize landowner concerns in its Informal Complaint. However, the Oliver County regulations themselves protect landowners, and the conditional use permit specifically required Minnkota to follow the Oliver County Zoning Ordinances. Oliver County regulations provide that electrical power transmission lines shall have minimal interference with farming and irrigation operations, and must follow quarter or section lines unless otherwise permitted by landowner. Rule 4.1(2). Oliver County's claims that Minnkota placing the structures near the road was based "entirely on economic considerations" are not accurate, as Minnkota was attempting to be mindful of landowners who had failed to execute the necessary easements until late in the process, in January 2013. Construction on the project had begun in May 2012, and the landowners at the relevant location did not sign an easement until eight months after construction began. By the time the easements were signed, Minnkota had already placed stakes where they intended to place the structures. The staking was done specifically at the landowner's request and the landowners had the benefit of seeing those before executing the easements. For the structures described in the Informal Complaint, the landowner issues are the sole reason Minnkota placed the transmission line where it did. Minnkota's power line placement complied with Oliver County regulations protecting landowners in agricultural areas. Further, Minnkota earnestly worked with landowners to address their concerns to avoid having to initiate condemnation of properties, which would further upset landowners.

In December 2011, Minnkota applied for a route permit from the Public Service Commission. The route permit was approved in April 2012 and construction began in May 2012. The route permit was appropriate, and was properly amended if and when any changes to the route were necessary. A route permit from the PSC must state whether there are any special conditions required by the PSC, and there are no conditions that Minnkota has been accused of violating. N.D. Admin. Code § 69-06-05-02. In the application for the route permit, a map was included to show the exact location of the structures along the route by placement of red dots on the map. The red dots representing the structures Oliver County is complaining of are clearly in the ditch along the gravel road. The County was formally given notice of the specific alignment and each pole location when its application for the route permit was served on all county auditors along the route, including Judith Hintz, the Oliver County auditor. No objection to the route was raised before or during construction. The final Order for the route permit was served by the PSC on the Oliver County auditor, as well as the Oliver County Commission chairman, Lee Husfloen. The Order referenced the map attached to the application for the route permit, which showed the placement of the structures that are complained of by red dots on the map.

Oliver County alleges that Minnkota made material false statements in its application for a route permit by representing to PSC that it had obtained approval of the local zoning authority "to place the transmission line 33 feet from the centerline of the County road." Informal Complaint, page 5. This is inaccurate. Oliver County approved the conditional use permit application which included a map showing the centerline of the 1000-foot corridor. No further conditions were placed on Minnkota other than following County regulations. Minnkota successfully followed County

regulations and worked with local landowners on structure placement to minimize interference with their farming practices. There was no material false statement in Minnkota's application for a route permit, and there was no failure to comply with any permit. PSC has no grounds to revoke the route permit.

Oliver County is complaining of the structures in that two-mile stretch being outside of Oliver County's easement, but within 75 feet of the centerline of the county highway. Section 24-01-42, N.D.C.C., states that an electrical supply line may not be constructed within 75 feet of a county highway right of way without the consent of the board of county commissioners. This statute must be read in conjunction with Section 24-01-43, which states that the penalty for violating 24-01-42 is that the utility will be required to pay for the expense of moving the utility where removal is required for purposes of highway expansion. Other than N.D.C.C. § 24-01-42, for which the penalty is that the utility must pay relocation costs if the road is ever expanded, Oliver County cites none of its own regulations or state laws or regulations that have been violated. As such, there is no basis on which to demand removal of the utility poles.

Oliver County was aware of the 1000-foot corridor and the centerline of that corridor. Oliver County was aware that the PSC had not yet approved that route at the time the conditional use permit was approved, and that landowners had not executed easements at that time. Oliver County issued a conditional use permit and placed no conditions on Minnkota, other than that Minnkota would need to follow County regulations. Minnkota obtained a proper route permit from the PSC, and in doing so, submitted a map showing the placement of the precise structures Oliver County is now complaining about. Oliver County was formally provided that map, and County officials had been served with notice of the application. In following County regulations, Minnkota was mindful of landowners in deciding where to place the transmission line. Well into construction, and after placing stakes showing where Minnkota would place the transmission line and structures, the landowners finally executed an easement for Minnkota in January 2013. The structures were constructed in January 2014. It is noteworthy that the structures were placed outside of the 33 foot right of way. In this particular stretch, the tillable field does not extend directly to the 33 foot right of way, but the boundaries of the fence and tillable acreage are further from the road, so the structures are between the fenceline and the roadway, which may give a perception that the structures are close to or in the ditch. If the tillable land and fenceline was located right at the right-of-way, the structures would appear to be at the edge of and slightly within the farmer's tilled field, which would cause an entirely different perspective and perception of where the structures are located.

The landowners of the property were very late in signing an easement. Construction on those structures did not happen until January 2014. As previously stated in an August 12, 2015 letter from Joel Larson at Minnkota, to Illona Jeffcoat-Sacco at the Public Service Commission, Minnkota made great effort to accommodate affected landowners' concerns. Importantly, upon consultation with the Oliver County Highway Superintendent, Minnkota was specifically directed to build outside of the road right-of-way, at least 33 feet from the centerline of the road. There

were no directives from this Oliver County official to place structures more than 75 feet from the centerline of the road. As such, Oliver County was consulted and provided specific input on the location of these structures, which was entirely complied with during construction. Despite all of the information available to Oliver County throughout the process, the County did not object to the location of the transmission line and structures until March 2014.

Instead of identifying any particular County regulation violation, Oliver County is left to argue that the placement of the structures violates Minnkota's own general comments and public information regarding where utilities would be located. Minnkota complied with the location of the structures within the 'clear zone.' The clear zone, according to the American Association of State Highway and Transportation Officials (AASHTO), depends on factors including speed on the road, average daily travel, and the sloping of the roadside. The clear zone differs based upon the specifics of each roadway. Based upon the maximum allowed speed of 55 mph at the location at issue, less than 750 vehicles per day, and a slope of 4:1 to 6:1, the clear zone along that area is between 14-18 feet from the edge of the driving line, or 24-28 feet from the center of the road. Minnkota's structures are between 35-36 feet from the centerline. Industry standards show that the structures are outside the clear zone, and any argument to the contrary is incorrect. As a matter of practicality, the location of the structures identified in the Informal Complaint was outside the clear zone as defined by the American Association of State Highway and Transportation Officials.

Oliver County's Prayer for Relief

The Informal Complaint shows the only remedy Oliver County is seeking is for the route permit to be revoked and for Minnkota to relocate the structures to "appropriate setbacks." Minnkota has had several meetings with Oliver County Commissioners proposing potential cost-effective solutions that would address Oliver County's safety concerns, but the only situation Oliver County has been interested in is moving the structures, which would bear a significant cost estimated to be over \$1 million. A meeting was held with the Public Service Commission, its staff and counsel, Minnkota, and individuals from Oliver County. After that, Oliver County and Minnkota met again to discuss potential mitigation options that would alleviate Commissioners' concerns. However, a few weeks later, Minnkota received a letter from Oliver County officials that Minnkota had 10 days to respond to Oliver County's demand that the structures be moved. Minnkota responded with additional information and reiterated its prior offers. Then Minnkota received the Informal Complaint.

Oliver County's complaint has been that the location of the structures is unsafe. Minnkota has offered many options to mitigate issues raised about perceived safety concerns, but Oliver County has rejected them. The only remedy Oliver County is seeking is expensive and burdensome. The location of the line and structures was available to Oliver County long before construction of the structures, but Oliver County gave no objection until construction was complete. Minnkota is requesting that no action on the Informal Complaint be taken by PSC. State law was not violated, and there is no basis to revoke the route permit.

June 29, 2016

Page 6

Sincerely,

Tami Norgard

Tami Norgard

Cc: Jerry Lien, PSC, jlein@nd.gov
Joel Larson, Minnkota, jl Larson@minnkota.com
John Mahoney, Oliver County, john@mahoney-legal.com

CONDITIONAL USE PERMIT EXHIBIT
EST. STRUCTURES: 69
EST. LAND USE: 235.69 ACRES
PROPOSED CENTERLINE
DWELLING



Scale: 1:60,000

