

MEMORANDUM

To: Commissioners Christmann and Fedorchak
From: Patrick Fahn
Date: February 22, 2017
Subject: PU-16-416 Minnkota Power Cooperative, Inc. – Compliance

Attached is staff's July 22, 2016 Memorandum reporting the findings of its investigation of the June 2, 2016 informal complaint by Oliver County.

I agree with the determination stated in staff's July 22, 2016 Memorandum that there is no clear violation of the Commission's September 7, 2011 and April 25, 2013 Orders in Case No. PU-09-670.

Staff stated that the County is better suited to carry the burden of facts and practices in this matter. Staff served its July 22, 2016 Memorandum on Oliver County on November 3, 2016. The docket remained open for a response from Oliver County. Oliver County has not responded.

Staff is not inclined to file a formal complaint.

MEMORANDUM

To: Commissioners
Fr: Jerry Lein, and Jack Schuh
Da: July 22, 2016
Re: Oliver County Informal Complaint, Case No. PU-16-416.

Oliver County filed an informal complaint requesting an investigation. After investigation, Staff is not inclined to file a Formal Complaint. There is no clear violation of the Order or the National Electric Safety Code. Furthermore, the gravamen of the allegations originate from practices and proceedings that occurred at the county level and without Commission involvement. This leaves an obscured view and would require Staff to carry the burden of facts and practices better suited to be presented by the County on its own account.

Background

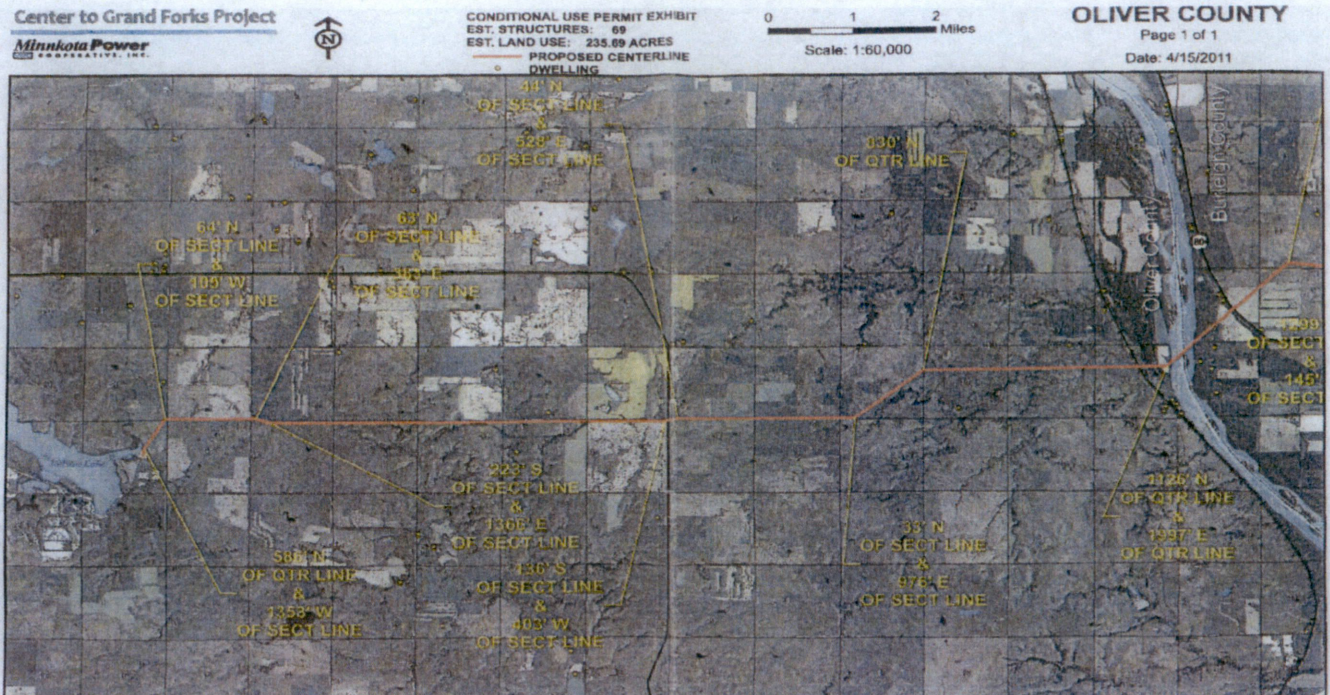
On June 1, 2016, Oliver County filed an Informal Complaint alleging Minnkota Power Cooperative, Inc. (Minnkota) violated N.D.C.C. 24-01-42 when it placed 345 kV transmission line structures along and within approximately 33 feet from the centerline of about two miles of a gravel county section line road between sections 29/32 and 28/33, T142N, R82W. On July 18, 2016 Oliver County clarified that the transmission line segment has five structures and is actually approximately one mile long extending westerly from highway 25 between sections 28 and 33.

NDCC 24-01-42: Construction of utility facility - Limitation. *No person, firm, or association may construct any electrical supply or communication line, gas, oil, or water, or other pipeline parallel to and within one hundred feet [30.48 meters] of the centerline of any state highway right of way or within seventy-five feet [22.86 meters] of the centerline of any county highway right of way without first obtaining the consent of the director or board of county commissioners except that such prohibition does not apply to highways or streets located within areas platted as townsites or additions and subdivisions thereof.*

In summary, Oliver County alleges that the current alignment presents hazards to the public from immovable structures in the immediate road ditch and from the potential for falling ice or wires onto the travelled portion of the roadway. Oliver County seeks an

order from the Commission suspending the permit and requiring Minnkota to relocate the structures.

Oliver County granted a conditional use permit for the project, but alleges the location applied for was further south of the section line road. Oliver County provided a copy of a map from Minnkota dated 4/15/2011 entitled "Conditional Use Permit Exhibit", which Oliver County alleges shows a route at least 136 feet south of the section line.



Transmission line map provided to Oliver County

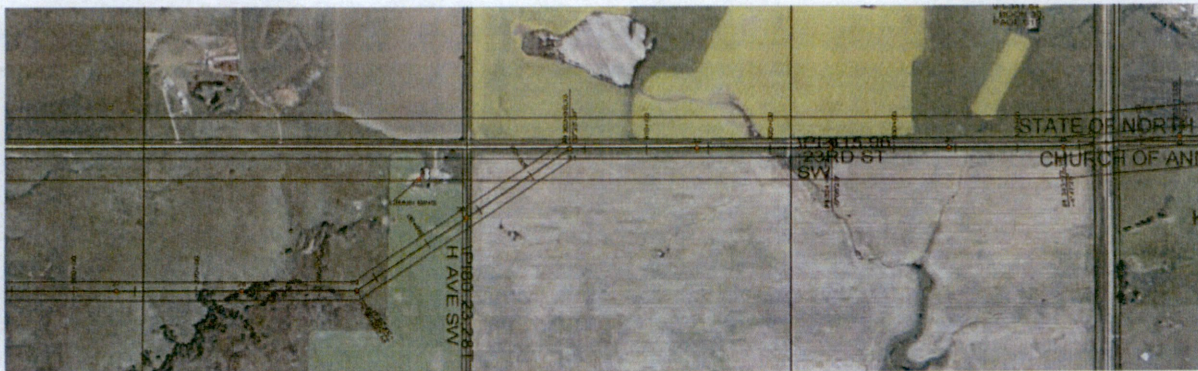
Oliver County reports that Minnkota attached literature to its county permit application indicating a 150-foot right of way with 75 feet on either side of the structures, which Oliver County interprets as "far broader than 33 feet setback that was actually used".

Minnkota responded that the map provided to the County shows the centerline of a 1000-foot corridor and does not show a specific route because at that time easements had not been obtained and there had been no route designated by the Commission. Minnkota states it consulted Oliver County's Highway Superintendent and was directed to build outside the road right-of-way, at least 33 feet from the center line of the road. Minnkota states Oliver County was advised that the transmission line could be placed at any location within the corridor, including just outside the County's section-line road right-of-way easements in some places. Minnkota notes that Oliver County was provided engineering drawings showing proposed structure locations when the route permit application was filed.

Minnkota further responded that its alignment complies with the American Association of State Highway and Transportation Officials (AASHTO) <http://www.transportation.org/> clear zone requirements, which for this road are between 14-18 feet from the edge of the driving lane, or 24-28 feet from the center of the road.

Staff Review:

Minnkota's 345 kV transmission line from Center to Grand Forks, North Dakota was sited by the Commission in Case No. PU-09-670. Separate corridor and route applications were processed. The portion of the route in question is a bit less than one mile along the south side of the section line road between sections 33 and 28. Section 33 is tilled farmland and appears gray colored in the plan and profile engineering design drawings below:



Engineering design drawings filed with the route permit application

Comparing the engineering design and as-built drawings indicates structure placement was as permitted:



As-built engineering drawings filed after construction.

Issues:

1. Did Minnkota construct its transmission line within seventy-five feet of the centerline of county highway right of way without first obtaining the consent of the director or board of Oliver County commissioners?

Minnkota's contends that the map provided to Oliver County indicated the center line of the then-proposed 1000 foot corridor. However, it was not labelled as such on the map. Reviewing the record in Case No. PU-09-670 indicates that the Oliver County permit was issued 9/7/2011 before a route permit application was filed and during the time that Minnkota's application for a 1000 foot-wide corridor was pending before the Commission.

Timeline

Corridor Application filed	2/18/2011.
Oliver County permit issued	8/4/11
Corridor Certificate 121 issued	9/7/2011.
Route Permit Application filed	12/2/2011
Route Permit 144 issued	4/25/2012.

2. Whether the present alignment is unsafe?

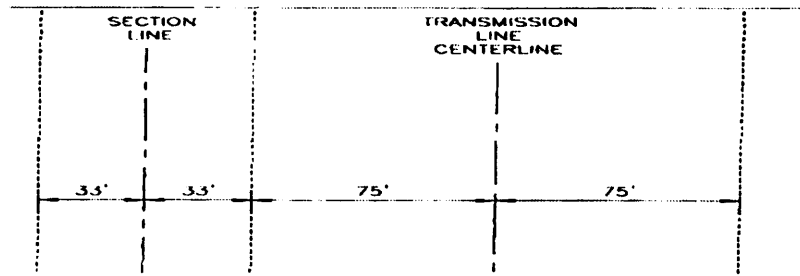
It does not appear that any known safety standards are being violated. Oliver County is concerned with immovable structures in the ditch and potential for ice falling on the roadway from overhead conductors. It is not clear whether the conductors overhang the driving lane.

Minnkota interprets an AASHTO clear zone requirement of 24-28 feet from the center of the road.

The National Electric Safety Code provides requirements for clearances of supporting structures from roads in Section 231(B)(2)s: *"where there are no curbs, supporting structures should be located a sufficient distance from the roadway to avoid contact by ordinary vehicles using and located on the traveled way"*. Section 232(b)(4) further provides: *"where a governmental authority exercising jurisdiction over structure location has issued a permit for, or otherwise approved, specific locations for supporting structures, that permit or approval shall govern."*

3. Whether transmission line right-of-way is required to be outside of the section right-of-way

Minnkota testified at the route permit hearing that its policy is to abut, but not overhang, road and section line right of way so that it can ensure control over a 150-foot right of way 75 feet on either side of the route center line. (See hearing exhibits U and T)



Hearing Exhibit T

Minnkota reports that the structures are outside of the 33 foot section line right-of-way, but were placed within the 75 foot buffer to avoid a landowner's cultivated field. There is no requirement in the Commission's siting laws and rules, or in the Order in Case No. PU-09-670, that the transmission line right-of-way be outside the County section line right-of-way.