
BOUGHEY LAW FIRM

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Thursday, July 25, 2019

John "Jack" Schuh
Special Assistant Attorney General
North Dakota Public Service Commission
600 E. Boulevard Ave., Dept. 408
Bismarck, ND 58505-0480

via email jschuh@nd.gov

RE: In re Complaint of Keith Kessler, Case Nos. PU-13-127 and I-15-0195

Dear Jack:

Please find attached my memorandum relating to the Kessler issue. If you are wondering why it took me so long to get this to you, I believe a short glance at the length and breadth of the document will provide you sufficient understanding in that regard.

What I initially thought would be a simple listing of what needed to be done to resolve the pending reclamation issues turned into a much more involved process that required a thorough review of the application process, the information received by the Kesslers from the company, what went wrong during the construction phase, and the improper placement of Turbine 441. Of greatest concern to me was the repeated discovery of Minnesota Power providing incorrect and sometime blatantly false information to the PSC.

Every time I looked more carefully into what had occurred, I came across another concern. I don't know if you have ever cleared a field of rocks, but I felt very much like I was doing just that, and every time I saw a rock to pick up I found another one or two nearby that also needed to be picked up.

As you know I served for a time as Deputy Insurance Commissioner for the State of North Dakota. In that position I dealt not only with the adoption and implementation of North Dakota law and regulations, I also served as the prosecutor and on occasion the administrative law judge in matters relating to insurance agents or insurance companies that had violated North Dakota law.

While serving as Deputy Insurance Commissioner the most essential question in my mind throughout my work as a regulator on behalf of the citizens of North Dakota was, "Is this person (or company) honest and trustworthy?" And when analyzing this essential question in relation to a company, the primary question for me was, "Does this company have as its employees or representatives honest persons who have attempted to protect the rights of North Dakotans?"

This does not mean that I insisted on every insurance agent or company being perfect or flawless. In those situation where we discovered a "bad apple" or several instances of misconduct, I would ask myself, "Did the company demonstrate its core values of honest and fair dealing by acknowledging any mistakes that had been made by its lower echelon? Or did it instead compound the error of its employees or representatives by providing misleading information, covering up the errors that had occurred, or worse yet, lie?"

I regret to inform you that the closer I looked at all that happened to the Kesslers and how Minnesota Power conducted itself during the application process, the construction phase, the reclamation process, and dealing with the complaint submitted by the Kesslers, I reached the conclusion that Minnesota Power should be prohibited from conducting business in the State of North Dakota.

I believe you will find in the document presented to you with this letter sufficient basis for my conclusion and specific proposals as to how to proceed as to the Kesslers and what the PSC should do in regards to Minnesota Power. I have kept in mind, in presenting possible solutions, our discussion to your desire to receive my suggestions as to items that perhaps should be included in order provisions that would apply to all companies submitting an application for a wind power project.

I would of course be glad to visit with you, any other members of the PSC staff, and any of the PSC Commissioners relating to the issues raised in the attached memorandum.

Sincerely,

A handwritten signature in black ink, appearing to read "Lynn M. Boughey". The signature is stylized and cursive.

Lynn M. Boughey

CC: Keith and Deanna Kessler
Jerry Lein (PSC)
David Moeller, Senior Attorney, Minnesota Power