

August 19, 2019

**VIA E-MAIL AND FEDERAL EXPRESS**

North Dakota Public Service Commission  
c/o Steven Kahl, Executive Secretary  
600 E. Boulevard, Dept. 408  
Bismarck, ND 58505-0480

Re: Response to Kessler Memorandum, Case No. PU-19-288

Dear Commissioners:

At the request of Commission Staff, Minnesota Power, an operating division of ALLETE, Inc. (“Minnesota Power”), is providing an informal response to the Memorandum filed by Mr. Boughey on behalf of Deanna and Keith Kessler (“Kesslers”). We appreciate the opportunity to provide the information below for the Commission’s consideration.

From Minnesota Power’s perspective, there are two main issues on which the Kesslers and Minnesota Power disagree. First, the Kesslers assert, and Minnesota Power disputes, that Turbine 441 was improperly placed too close to a farmhouse owned by the Kesslers in Section 15, Township 141 North, Range 87 West, Oliver County, North Dakota. Second, although the Kesslers executed a wind easement and land lease agreement with Minnesota Power for the Bison 4 Wind Project (“Project”), the Kesslers will not allow Minnesota Power or its contractors to access their property in order to complete reclamation work without a separate access agreement. Each of these issues is discussed further below.

With respect to Turbine 441, Minnesota Power respectfully disagrees that the turbine was improperly placed too close to a farmhouse owned by the Kesslers. At the time of permitting the Project, the farmhouse on Section 15 was unoccupied and, as a result, Minnesota Power did not apply its voluntary 1,400 foot turbine setback. Further, contrary to the allegations set forth in the Memorandum, the Kesslers did not raise a concern about the placement of Turbine 441 until February 2017. Although Mr. Kessler testified regarding other concerns at the September 13, 2013 public hearing, he did not testify concerning either the location of Turbine 441 or the farmhouse in Section 15, nor did he raise concerns separately with Minnesota Power. Likewise, while the Kesslers contacted Minnesota Power and Commission Staff regarding reclamation concerns in 2015, they did not identify any concerns with either Turbine 441 or the farmhouse. Instead, the Kesslers waited until two years after the Project started commercial operations to raise a concern regarding Turbine 441.

With respect to the reclamation issues identified by the Kesslers, Minnesota Power has

made repeated attempts to try to address the Kesslers' concerns. Below is an overview of Minnesota Power's efforts:

- December 8, 2015: Minnesota Power provided a response to each item identified by the Kesslers in a complaint given to Jerry Lein, also noting that Minnesota Power had been working with the Kesslers to address their reclamation concerns since construction of the Project.
- May-October 2016: Minnesota Power picked up rocks from the collector line of Section 21, sprayed the collector line in Section 21 to control weeds, and retained a contractor to fix fence splices (with the exception on one area where cattle were located).
- February 2017: Minnesota Power and Mr. Kessler spoke regarding reclamation concerns.
- April 14, 2017: After Mr. Kessler contacted Commission Staff in February 2017, Minnesota Power met with Commission Staff and the Kesslers on site to discuss the Kesslers' concerns, and three categories of reclamation concerns were identified: (1) washouts, ruts, rocks, weeds and other minor reclamation issues including further de-compaction and reseeding along portions of crane walk paths; (2) replacement of remaining areas of spliced fencing; and (3) fixing a cattle guard and potentially re-routing a fence near Turbine 441.
- May 2017: Minnesota Power fixed the wing on the cattle guard in Section 15, picked up rocks around turbine 451, and switched fence posts from one side of a fence to the other side.
- June 2017-February 2018: To try to resolve matters with the Kesslers, Minnesota Power obtained an appraisal of and presented an offer to purchase the NW/4 of Section 15 from the Kesslers. Minnesota Power also made a money offer to address the remaining reclamation items requested by the Kesslers.
- May 2018: Minnesota Power met with the Kesslers to discuss their counter offer (either removal of Tower 441 and completion of reclamation or payment of approximately \$3,500,000 to address Tower 441-related concerns and reclamation).
- May 29, 2018: Minnesota Power sent a letter to the Kesslers formally rejecting their counter offer and including a proposal to address the still-remaining reclamation items identified during the April 2017 meeting with Commission Staff.
- June 2018: Minnesota Power retained Wenck Associates, Inc. ("Wenck"), to conduct an independent, third-party analysis of the Kessler lands to determine remaining reclamation

needed to address Kessler's concerns regarding "washouts, ruts, rocks, weeds, and other minor reclamation issues including a need for further de-compaction and reseeding along portions of the crane walk paths." Wenck's only recommendation for further action was to stabilize and restore a washout forming along the turbine 440 access road and to continue annual noxious weed control. Minnesota Power met with the Kesslers to discuss the report, as well as next steps for completing the remaining reclamation. No resolution was reached, and the Kesslers indicated that they would not allow work on their land during the growing season.

- August 2018: Mr. Kessler called Minnesota Power to discuss Minnesota Power completing certain reclamation work.
- August-September 2018: Minnesota Power scheduled two contractors to complete fence work and address an erosion issue. On August 29 and September 4, Mr. Kessler informed Minnesota Power that he would not authorize Minnesota Power to enter onto his property to conduct the work without a new access agreement and compensation. Since the Kesslers executed and are being compensated for a wind easement and land lease agreement for the Project, Minnesota Power believes its existing agreement provides access rights to complete the agreed-upon fencing and erosion control repairs.
- September 2018-Present: The Kesslers have not allowed Minnesota Power or its contractors onto their land to complete reclamation work. Despite having existing easement rights, Minnesota Power asked Mr. Kessler what he wanted as access compensation, but did not receive a response. Although Minnesota Power received an e-mail in May from Mr. Boughey indicating he was working on a proposal to present to Minnesota Power on behalf of the Kesslers, Minnesota Power did not receive a proposal. On July 25, 2019, Mr. Boughey filed his Memorandum with the Commission.

As detailed above, Minnesota Power has worked diligently to try to resolve the reclamation issues with the Kesslers, but the Kesslers have chosen not to allow Minnesota Power or its contractors onto their property to complete reclamation.

At this point, Minnesota Power believes it may be beneficial to have the assistance of the Commission to try to resolve the remaining reclamation issues. To this end, Minnesota Power proposes the following:

1. That the Commission retain Houston Engineering, Inc., the Commission's construction inspector for the Project, to conduct an on-site reclamation investigation of the Kesslers' property to identify the scope of reclamation required. As part of the investigation, we ask that Houston Engineering, Inc., review the documentation in Case No. I-15-0195 and the information provided in Case No. PU-19-288 identifying the Kesslers' reclamation concerns, and that they consult with the Kesslers and Minnesota Power regarding the

reclamation concerns. Once Houston Engineering, Inc., has completed its investigation, Minnesota Power would either complete the scope of work identified (if allowed to access the Kesslers' property), or would provide monetary compensation to the Kesslers sufficient to allow the reclamation work to be completed.


2. That the Commission retain, at Minnesota Power's expense, a third-party public liaison to facilitate communications between the Kesslers, Minnesota Power, and Houston Engineering, Inc.

We are hopeful that these steps will help facilitate a resolution to the reclamation issues.

Finally, should the Commission wish to pursue a formal complaint process, Minnesota Power respectfully requests that the Kesslers be required to file a complaint containing a concise statement of the claims or charges upon which the Kesslers rely that are within the authority of the Commission to address, as required by N.D.C.C. § 28-32-21. The Memorandum filed does not meet this requirement, and Minnesota Power cannot fully respond to it without essentially litigating the matter by brief outside of an evidentiary hearing. Requiring a concise complaint would clarify the issues for all involved and enable Minnesota Power to provide a clearer, more concise response.

Again, Minnesota Power appreciates the opportunity to provide this letter, and is available to answer any questions.

Sincerely,



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