

May 20, 2020

**VIA E-MAIL**

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

Re: Response to Kessler Revised Complaint, Case No. PU-20-194

Dear Commissioners:

Minnesota Power, an operating division of ALLETE, Inc. (“Minnesota Power”), is providing an informal response to the Revised Complaint filed by Mr. Boughey on behalf of Deanna and Keith Kessler (“Kesslers”) on April 27, 2020.<sup>1</sup> We appreciate the opportunity to provide the information below for the Commission’s consideration.

As an initial matter, Minnesota Power is pleased to note that the reclamation issues previously raised by the Kesslers have been resolved. Mr. John Schuh recommended that the parties utilize the Wind Energy Restoration and Reclamation Oversight Program, administered by the North Dakota Department of Agriculture, to assist with resolving the reclamation issues. Through that program, and with the assistance of the North Dakota Mediation Service, the reclamation issues were resolved through a Settlement Agreement between Minnesota Power and the Kesslers, dated December 20, 2019, a copy of which was filed with the Commission on January 3, 2020 (Case Nos. PU-19-288, PU-13-127, and I-15-0195).

Thus, to Minnesota Power’s knowledge, the only matter of dispute remaining between Minnesota Power and the Kesslers pertains to the placement of Turbine 441. In their Revised Complaint, the Kesslers allege 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,

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<sup>1</sup> At this time, the Revised Complaint has not been served upon Minnesota Power pursuant to N.D.C.C. § 28-32-21(1)(b), and this informal response is not an admission of service or a waiver of the service requirement. Further, this informal response is not a formal “answer” as provided for by N.D.C.C. §§ 28-32-21(1)(e) and (g), and Minnesota Power reserves the right to assert in any formal proceeding that the Revised Complaint does not meet the requirements of N.D.C.C. § 28-32-21(1)(a).

North Dakota. Minnesota Power respectfully disagrees that Turbine 441 was improperly placed too close to a farmhouse owned by the Kesslers.<sup>2</sup>

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 Revised Complaint, 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.

Under the circumstances, we do not believe a formal complaint process should be initiated. However, 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.

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<sup>2</sup> On July 25, 2019, the Kesslers filed a Memorandum with the Commission in which they alleged that Turbine 441 was improperly placed too close a farmhouse they own. On August 19, 2019, Minnesota Power filed an informal response to the Memorandum denying the Kesslers' allegations regarding Turbine 441. The relevant portions of Minnesota Power's August 19, 2019 informal response are incorporated in this informal response.

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

Sincerely,



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