

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Keith and Deanna Kessler,)	Case Nos. PU-20-194
)	OAH File No. 20200211
Complainants/Petitioners,)	
)	KESSLERS'
v.)	PRETRIAL
)	INFORMATION
Minnesota Power, a division of ALLETE,)	
Inc.,)	
)	
Respondent.)	

I. Witness List

1. Keith Kessler
2. Deanna Kessler
3. Stephen Kessler
4. Hayden Kessler
5. Jerry Lien
6. John Schuh
7. Todd Simmons
8. Scott Monroe
9. Wade Isaacson
10. Matt Freudenrich
11. Barry Gartner
12. John Kessler

II. Exhibit List

Contracts and Agreements Between the Parties

1. All contracts or agreement between Minn Power and Kesslers

Maps, Google Maps, Plat-Maps, Plat-Book, Diagrams, or Drawings

2. Project Google Maps
3. Kessler Property google maps

4. Kessler Property plat maps
5. Kessler Property drawings
6. County Plat Maps
7. Dept Interior Land Description Diagram
8. Map Showing Project Design and Location of Turbines (filed at public hearing 1a)
9. Map Showing Exclusion and Avoidance Areas (filed at public hearing 2)
10. Map Showing Exclusion and Avoidance Areas (filed at public hearing 2) with added letters for each structure
11. Google Map Showing Kessler Residence and Turbine 441

Photos

12. Kessler Residence Photos Pre-Turbine
13. Kessler Residence Photos Post-Turbine
14. Kessler Residence and Surrounding Area Photos
15. Kessler Road Photos
16. Kessler Land Photos
17. Kessler Videos of flickering and noise from Turbine

Discovery Responses Provided by Both Parties

18. Kesslers Answers to Interrogatories
19. Kesslers Supplemental Answers to Discovery
20. Kesslers Documents Provided through Discovery
21. Minn Power Answers to Discovery
22. Minn Power Supplemental Answers to Discovery
23. Minn Power Documents Provided through Discovery
24. Kesslers Responses to Requests for Admissions
25. Minn Power Responses to Requests for Admission

Deposition Binder and Exhibits

26. Kessler Binder of Documents (pages 1-557) used at depositions
27. Minn Power Deposition Exhibits

Deposition Transcripts

28. Keith Kessler 10-13-20
29. Deanna Kessler 10-13-20

30. Jerry Lein 10-30-20
31. John Schuh 10-5-20
32. Deposition of Todd Simmons 10-14-20
33. Deposition of Scott Monroe 10-14-20
34. Deposition of Wade Isaacson 10-14-20
35. Deposition of Matt Freudenrich 10-5-20
36. Deposition of Barry Gartner 10-14-20

Other Documents

37. Minn Power documents evidencing amount of cost for putting up Turbine 441
38. Minn Power documents evidencing amount of cost for putting up all project Turbines
39. Article from web showing annual production value of Turbines
40. Minn Power documents evidencing annual production from Turbine 441 (MG and re-sale valuation)
41. Minn Power documents evidencing annual production from all project Turbines (MG and re-sale valuation)
42. Minn Power documents evidencing cost of decommissioning single Turbine such as 441
43. Article from web showing cost of decommissioning single Turbine
44. ExCel Energy Letter re decommissioning cost 2-8-11
45. Attorney Boughey billings
46. Newspaper articles of obituaries that confirm dates re neighbors

PSC Files

47. PSC File Case No. PU-13-127
48. PSC Public Hearing Signup Sheet 9-13-13
49. Minn Power Application 9-13-13 – Exhibit 1 at Public Hearing
50. Supplemental Materials 9-13-13 – Exhibit 2 at Public Hearing
51. Certification Relating to Order Provisions 9-13-13 – Exhibit 3 at Public Hearing
52. PSC Informal Fill I-195
53. ALJ Findings of Fact, Conclusions of Law, and Order 9-25-13
54. Revised Formal Complaint 6-29-20

Legal Materials

55.Relevant ND Admin. Code Section

56.Relevant NDCC Sections

III. Subpoenas Issued by Counsel as to Witnesses

1. Jerry Lien
2. John “Jack” Schuh
3. Todd Simmons
4. Scott Monroe
5. Wade Isaacson
6. Matt Freudenrich
7. Barry Gartner

IV. Request ALJ for Subpoenas as To Documents

1. Minn Power documents evidencing amount of cost for putting up Turbine 441
2. Minn Power documents evidencing amount of cost for putting up all project Turbines
3. Minn Power documents evidencing annual production from Turbine 441 (MG and re-sale valuation)
4. Minn Power documents evidencing annual production from all project Turbines (MG and re-sale valuation)
5. Minn Power documents evidencing cost of decommissioning single Turbine such as 441

V. Pre-filed written testimony

A. Keith Kessler

Keith Kessler will testify to all the things he already has stated in his deposition, but will expand on any points he considers necessary. This testimony as shown in his deposition will include the following:

- history of his farmland and long-standing family ownership
- discussions with Minnesota Power regarding using their property and obtaining easements

- discussions surrounding the easements themselves and the eventual sign of the easements
- discussions with Minnesota Power relating to the second residence and its prior, present, and future use for their son when he returns from college -- prior to the public hearing
- testimony as to the use of the residence throughout the years, his ability to serve as a residence, its use for events and for hunting, and its intended use when their son returned from college
- testimony as to the various structures listed on the exhibit presented at the public hearing that included abandoned properties, some residents that were being used, and some structures that could not be in any way consider the residence
- testimony as to the failure of Minnesota Power to include the residence on the exhibit
- testimony as to what occurred at the public hearing, including his relaying his concerns about the location of the Turbine near the residence, and the actions of Minnesota Power to get him not to testify about those conceptions
- discussions with Minnesota Power following the public hearing and the commitments Minnesota Power made regarding the location of the Turbine
- discussion about problems with and concerns about Minnesota Power prior to and during the construction phase
- testimony as to the placement of the Turbine, the distance to the residence, and the problems created by that placement
- testimony as to the fact that Minnesota Power line about following the state setback requirements
- testimony as to the fact that the representatives of Minnesota Power were informed repeatedly that the structure is a residence, has been used as a residence, can be used as residence, and will be used by his son as a residence when he returns in college
- testimony as to the fact that representatives the Minnesota Power lied to the Kesslers about whether they had ever been told about the structure and its use by the Kesslers

- testimony as to the fact that representatives of Minnesota Power lied about what occurred at the public hearing, as shown by the testimony of Jerry Lein
- testimony as to the fact that Minnesota Power in its response to the Kessler complaint lied repeatedly to the PSC in regards to the actual facts, most directly in their letter response to the PSC
- testimony as to the Good Friday discussions with Minnesota Power and PSC staff members on site
- testimony as to the effect of Turbine 441 on the residence itself, including noise and flickering
- request that the PSC declare that the structure be considered an occupied residence
- request that the PSC declare that Minnesota Power should have included the structure on its map provided at the public hearing
- request that the PSC declare that Minnesota Power had been told that the structure was a residence and was going to be used as a residence by their son and as such should have been listed on the exhibit presented at the public hearing
- request that Minnesota Power be required to move Turbine 441 away from the residence
- requested Minnesota Power be prohibited from doing any further business in North Dakota
- requested that the Kessler attorney fees be paid in full for all aspects of this matter, including the fees relating to the earlier issues resolved by mediation
- we reserve the right to testify as to any and all other matters discussed in the deposition
- Keith will also testify that when negotiating the original easement he was told by Paul Johnson of Minnesota Power that if he had any concerns about the placement of any turbine they would be able to move it to a different location to resolve those concerns.

B. Deanna Kessler

Deanna Kessler will testify to all the things she already has stated in her deposition, but will expand on any points she considers necessary. This testimony as shown in her deposition will include the following:

- confirmation of the information provided by Keith, including specific reference to the times in which she was present when discussions occurred with representatives of Minnesota Power
- we reserve the right to testify as to any and all other matters discussed in the deposition

C. Stephen Kessler

- Stephen will testify as to the historic use of the structure, when he was in school, and the intended use of the structure once he returned from college.

D. Hayden Kessler

- Hayden will testify as to the historic use of the structure, when he was in school, and the intended use of the structure once he completed high school.

E. Jerry Lien

- Jerry Lien will testify (as he testified at his deposition) that he observed Kesslers talking with the representative of Minnesota Power during the public hearing, directly contradicting the prior testimony of Minnesota Power
- Jerry Lien will testify (as he testified at his deposition) that the rules and regulations employed by the PSC do not include a definition of occupied residence, and that it will be left to the PSC to determine an appropriate definition

F. John Schuh

- John Schuh will testify (as he testified at his deposition) that the rules and regulations employed by the PSC do not include a definition of occupied residence, and that it will be left to the PSC to determine an appropriate definition

G. John Kessler

- John Kessler will testify that when visiting with Minnesota Power he asked them if there had been any issues as to damage to the land when there was a crane walk when going over the land and Minnesota Power denied that there had been any instances of damage to the land by the crane walk, but this is untrue because Minnesota Power was aware of the damage done by the crane walk on Keith Kessler's land.

We have listed as witnesses various Minnesota Power employees that were deposed so that we can ensure that the testimony they provided in the deposition gets in, and most particularly the facts relating to the failure of Minnesota Power to determine the use of the residence at issue, to inquire of the landowner if the structure is capable of being a residence, was considered a residence, or would be used as a residence anytime in the future. Further testimony will be elicited as to the cost of decommissioning Turbine 441, the options of moving it to another location, the ability of Minnesota Power to have done exactly that during the construction phase, the income generated by Turbine 441, and a review of all the incorrect information provided to the PSC in furtherance of its application for this project, and indirect response to the Kesslers' complaint.

We have been informed by the attorney for the PSC that normally we do not provide a description of the testimony of anyone other than our own witnesses, and as such we will simply state that we intend to bring out to cross examination of Minnesota Powers witnesses all the information listed above as well as the information elicited during their depositions.

Dated the 8th day of March, 2021.

Lynn Boughey (#04046)
Attorney for Keith &
Deanna Kessler

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STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Keith and Deanna Kessler,)	Case Nos. PU-20-194
)	OAH File No. 20200211
Complainants/Petitioners,)	
)	
vs.)	CERTIFICATE OF SERVICE
)	
Minnesota Power, a division of ALLETE,)	
Inc.,)	
)	
Respondent.)	

¶1 I hereby certify that the following document (s):

1. Kesslers’ Pretrial Information;
2. Subpoena to Jerry Lien;
3. Subpoena to John “Jack” Schuh;
4. Subpoena to Todd Simmons;
5. Subpoena to Scott Monroe;
6. Subpoena to Wade Isaacson;
7. Subpoena to Matt Freudenrich;
8. Subpoena to Barry Gartner; and
9. Subpoena Duces Tecum to Minnesota Power.

were served upon the above-named Respondent by serving true and correct copies of the above-listed document on the 8th day of March, 2021, via email to:

Steven Kahl
Executive Director
ND Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480
ndpsc@nd.gov
(email & original and 10 copies
Via hand delivery)

ALJ Timothy J. Dawson
Administrative Law Judge
Office of Administrative Hearings
2911 N. 14th Street, Suite 303
Bismarck, ND 58503
tjdawson@nd.gov
(Via email & hand delivery)

John Schuh
ND Public Service Commission
600 E. Boulevard, Dept. 408

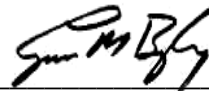
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¶2 Dated this 8th day of March, 2021.



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