

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Keith and Deanna Kessler
v Minnesota Power, a division of ALLETE, Inc.
Complaint

Case No. PU-20-194

ORDER ON MOTION IN LIMINE

OAH File No. 20200211

The Public Service Commission (“Commission”) issued a Notice of Hearing on February 3, 2021. The issues listed are:

1. Whether the Section 15 structure was an occupied residence at the time the Commission issued its Order Granting a Certificate of Site Compatibility for the Project (Order).
2. If the Section 15 structure was an occupied residence at the time the Commission’s Order was issued, does placement of Turbine Number 441 violate the Commission’s Order; if so, what remedies are appropriate.
3. At the public hearing, did Minnesota Power withhold information relating to the Section 15 structure from the Commission that Minnesota Power should have communicated to the Commission; if so, what remedies are appropriate.

In a September 23, 2020, Order on Motion for Partial Dismissal, the Commission dismissed, the Kesslers’ claims for (1) reimbursement of all attorney fees incurred by the Kesslers relating to the prosecution of this action, and (2) reimbursement for damages incurred for damage to Section 15, devaluation of Section 15, as well as personal damages for inconvenience, nuisance, and emotional distress. Evidence relating to these matters is not relevant. In addition, relevant evidence does not include evidence previously excluded from the Subpoena Duces Tecum to Minnesota Power by this Administrative Law Judge.

Considering the preceding actions, in relation to the Minnesota Power's Motion in Limine, the following exclusions are placed on evidence and witnesses.

IT IS ORDERED,

- Exhibits 17 and 37-44 are allowed in as much as the exhibits relate to any moving, removing, or decommissioning Turbine 441 or any civil penalty the Commission may provide as it relates to Turbine 441 and not including the remedies excluded by the Order on Motion for Partial Dismissal or items not included in the Subpoena Duces Tecum to Minnesota Power.
- Exhibit 45 is excluded subject to the ruling by the Commission on the Motion for Reconsideration of Dismissing claims for Attorney Fees.
- Witness Keith Kessler will be allowed to testify as to the impacts of Turbine 441 on the structure and anyone who may occupy the structure. This testimony addresses the proper remedy to impose by the Commission if the structure is found to be an occupied residence. He will not be allowed to address every complaint he has as to Minnesota Power. He must limit his testimony to events within his personal knowledge relating to Turbine 441 and not the entire wind farm. Requesting the relief of prohibiting Minnesota Power from doing any further business in this state is not appropriate as testimony.
- Witness Deanna Kessler is limited in the same manner as Keith Kessler.
- Witness Stephen Kessler may testify as to what purpose he used the structure for and what he intended to use the structure for up to the time the Commission issued its Order. "Occupied residence" is not defined and information relating to the structure may not be excluded as irrelevant if the information may lead to a definition by the Commission that is not absurd.

- Witness Hayden Kessler may testify in the same manner as Stephen Kessler.
- John Kessler is not allowed to testify about the crane walk and damages to the Kessler's property because of the crane walk.
- Witnesses may be cross examined as to the evidence as allowed by the Subpoena Duces Tecum to Minnesota Power. Income information relating to Turbine 441 and to the allowed remedies of moving, removing, or decommissioning or any civil penalty the Commission may impose on Minnesota Power is not prohibited. Questions requesting in depth information may be limited because in-depth questions are not needed to determine the proper allowed remedy. The information may be limited by a protective order. Any question not relating to the structure or Turbine 441 may not be allowed as well. These will be determined on an objection basis during the hearing.

Dated at Bismarck, North Dakota, this 24th day of March 2021.

State of North Dakota
Public Service Commission

By: 

Timothy J. Dawson
Administrative Law Judge
Office of Administrative Hearings
2911 North 14th Street – Suite 303
Bismarck, North Dakota 58503
Telephone: (701) 328-3200

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Keith and Deanna Kessler
v Minnesota Power, a division of ALLETE, Inc.
Complaint

Case No. PU-20-194

CERTIFICATE OF SERVICE

OAH File No. 20200211

The undersigned certifies that the original of the **ORDER ON MOTION IN LIMINE** were mailed, inside mail, at the State Capitol, on the 24 day of March 2021, to:

John Hamre
Public Service Commission
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505-0480

and that true and correct copies of the above document were sent by electronic mail and mailed, regular mail, on the 24 day of March 2021, to:

Lynn Boughey
Boughey Law Firm
PO Box 1202
Mandan, ND 58554-1202

Mollie Smith
Fredrikson & Byron, PA
200 South 6th Street - Suite 4000
Minneapolis, MN 55402-1425

and that a true correct copy of the above document were sent by electronic mail and mailed, inside mail, at the State Capitol on the 24 day of March 2021, to:

John Schuh
Public Service Commission
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505-0480

Brian Johnson
Public Service Commission
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505-0480

OFFICE OF ADMINISTRATIVE HEARINGS
Timothy J. Dawson, Administrative Law Judge



Louise Wetzel