

MEMORANDUM

To: File
Fr: Jerry Lein
Da: March 1, 2017
Re: Keith Kessler Complaint

Mr. Kessler is a participating landowner with two turbines in the Bison 4 wind project sited by the Commission in Case No. PU-13-127. On June 11, 2016 Mr. Kessler left voice mail with Commissioner Kalk regarding fencing and other issues with Minnesota Power. I returned his call and we agreed I would have somebody from MN Power's main office contact him. I contacted Dan McCourtney, MN Power Environmental & Land Supervisor, and asked him to contact Mr. Kessler and let me know when the issues are resolved.

If I remember correctly, I next heard from Mr. Kessler by phone on November 30th. He had a list of issues, which I asked him to email to me. I received his list the next day and passed it on to Mr. McCourtney at MN Power.

On January 5, 2016 I received an update from MN Power that it had been working with Mr. Kessler since construction of Bison 4 began and continues to work to resolve the issues. Diagrams showing fencing adjustments made on his property to accommodate two turbines near his property were provided. MN Power believed it had signed easements from Mr. Kessler for non-turbine project infrastructure and these fence adjustments were within the easement area. MN Power agreed to move the fences across the two turbine crane pads.

On February 6, 2017 MN Power filed a copy of a proposed mitigation agreement/plan dated Dec 21, 2016, which Mr. Kessler refuses to sign. As detailed in the document, MN Power believes the issues are all resolved except:

- Fencing 1d.-There were cows pastured in the area specified this past fall. The fence is scheduled to be replaced this spring during unfrozen ground conditions.
- Fencing 3.- Mr. Kessler has not made a selection of which option he prefers. Minnesota Power has asked him if there was a different option he preferred but has received no response. Minnesota Power will work to correct any issues once Mr. Kessler makes a decision.
- Crane Walk 2- Mr. Kessler has not signed the attached Mitigation Agreement and Minnesota Power is withholding payment until there is a documented agreement. \$93.00 additional compensation.

Also, in February, 2017 Commission Attorney John Schuh, visited with Mr. Kessler by telephone following up on issues raised by Mr. Kessler. Mr. Kessler raises a new issue with noise from a turbine that is too close to his son's residence. GIS data indicates the turbine is approximately 1122 feet from the residence. MN Power reports that this residence was unoccupied at the time Bison 4 was permitted and constructed. Based on photographs and electric usage at the residence MN Power concludes that it became occupied during this last year.

The Commission does not normally consider distances from unoccupied or abandoned residences when issuing site permits. In this case the residence was not identified as an occupied residence in the siting application process. Mr. Kessler did appear as a public witness at the hearing raising questions about underground waterlines, weed control and he didn't get a final consultation on proposed facility locations he thought had been promised to him. (Hearing recording at 2 hours 19 minutes) He did not bring up the residence.

Addendum

To: File
Fr. John M. Schuh
Da: March 2, 2017, 2:13 PM
Re: Follow-Up to Mr. Lein's Memorandum

Jerry and I followed up with Mr. Kessler via phone. We discussed the outstanding issues relating to Bison 4 and his property. The remaining issues may be summarized as: Outstanding fencing issues, ruts, an underground collection line that has left an imprint on his property, some other minor things such as left over items, easement violations, and the wind turbine being too close to a residence. I advised him that we would not be able to enforce his easement provisions and that we would have to look back into the record to see what can be done with regard to the nuisance wind turbine. Mr. Kessler also expressed frustration in getting the run-around by the company, but does not want the company to come out until the snow has melted so that he can do a full assessment of outstanding issues.

I suggested an appropriate course of action is to have Mr. Kessler call PSC Staff when he determines the snow has melted enough to make a proper assessment. Staff will arrange a visit to Mr. Kessler's property with the company and set out a compliance plan. Mr. Kessler agreed that this was an acceptable course of action. Under new siting landowner complaint procedure, all documents will be placed in an I-File and will be linked to the siting case as a "related case."

