

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Keith and Deanna Kessler,	)	Case Nos. PU-20-194
	)	OAH File No. 20200211
Complainants/Petitioners,	)	
	)	<b>KESSLERS'</b>
v.	)	<b>SUPPLEMENTAL</b>
	)	<b>BRIEF ON MOVING/</b>
Minnesota Power, a division of	)	<b>REMOVING THE</b>
ALLETE, Inc.,	)	<b>TOWER</b>
	)	
Respondent.	)	

On July 12, 2021, PSC staff, after initiating the issue, requested a formal filing in regards to “moving/removing the tower.” The parties were allowed 10 days to submit the filing.

**Kessler Point Number 1: The Commission at its work session already decided that the tower is to be REMOVED and that whether it is MOVED to another location is beyond the issue before the PSC and would be beyond its jurisdiction in regards to enforcement of the original order. As such, the issue raised (remove vs. remove) is not necessary or appropriate.**

The issue raised by PSC staff is not necessary, and indeed is contrary to the decision and discussion of the PSC. During the work meeting that took place on June 30, 2021, the PSC explicitly concluded that the only remedy is removal, and the issue of moving

the turbine to some other location is beyond the authority of the PSC, would constitute a variance, and would take away from the clean decision of the PSC that removing turbine 441 is required so that Minnesota power is in compliance with the original order.

It is clear from the work session of June 30, 2021, that the Commission determined a violation relating to Question 1 by placing Turbine 441 too close to the Kesslers' residence. It is also clear that all three Commissioners decided that the only appropriate remedy is to remove the turbine and require compliance with the original order relating to the 1400-foot setback. The Commissioners clearly and explicitly stated that the issue of locating Turbine 441 somewhere else was beyond the Commission's authority and is not properly before the Commission, and whatever Minnesota Power decided to do after removing Turbine 441, that was left to them. As such, the introduction of the issue of relocating Turbine 441 raised by PSC staff after the work session is inappropriate. The three Commissioners agreed at the work session that the remedy is removal of Turbine 441 so that Minnesota Power is in compliance with the PSC's previous order, and

the issue of relocation is not presently before the Commission and is not a remedy to be considered in regards to the Kesslers' complaint.

The following excerpts from the recording of the work session clearly demonstrate that the issue of moving or relocating the tower to another location is not presently before the PSC and that the only remedy is the removal of the tower:

**BEGIN AT 50:21**

**Commissioner Fedorchak:** Okay. Well, I guess from my standpoint I think we're on the same page, except for number 3. But we could certainly, move forward on number 1 because we agree on that. So that brings us to number 2, what's the remedy and I think the remedy that they asked for is to move Turbine 441.

**Commissioner Kroshus:** There really is no other remedy.

**Commissioner Fedorchak:** Right. So, I'm comfortable with that remedy.

[Discussion regarding possibility of parties coming up with some type of agreement]

**Commissioner Christmann:** [Trying to broker a settlement is] a remedy, but beyond our scope of authority we should be weighing in, so move the turbine. Are they ordered correctly? Number 1, I think we're all on the same page. Number 2 would be the remedy, we're all on the same page, I believe. . . .

**END AT 52:30.**

*[Discussion as to facts that show residence was occupied]*

**BEGIN AT 58:23**

**Commissioner Fedorchak:** And it ties to the siting act.

**Brian Johnson:** Correct.

**Commissioner Christmann:** So the order would not be compromised.

**Brian Johnson:** No. I don't believe so.

**END AT 58:32**

*[Discussion as to not using definitions and facts that show residence was occupied]*

**BEGIN AT 1:06:19**

**Commissioner Fedorchak:** So, can we move forward with a drafting of an order

**Brian Johnson:** Yup

**Commissioner Fedorchak:** And I think Brian and I are on the same side on number 3 so I don't know how you want to deal with that particular piece of it, Randy, but maybe you could take a peek at the order and go from there, because right now I would see the order as saying, Was an occupied residence at the time? Yes. And if so, then look at the remedies. Remove the turbine. Number 3, did they withhold information? No.

**END AT 1:06:53**

[Commissioner Kroshus discusses number 3, withholding of information,  
with the Commissioner Christmann]

**BEGIN AT 1:13:06**

**Brian Johnson:** So finding on 1 of occupancy and that the Turbine is to be moved or removed? What do you . . . ?

**Commissioner Kroshus:** Well, I would think,

**Commissioner Fedorchak:** It has to be, it has to be 1400 feet from, they have to comply with the order.

**Brian Johnson:** Okay, sure.

**Commissioner Fedorchak:** Can't' be less than 1400 feet.

**Commissioner Kroshus:** Well, I think that this this has to be removed. You can't make it 1400 feet without removing it. But

**Commissioner Fedorchak:** Well, that's up to them ---

**Commissioner Kroshus:** In order, in order to just move it to a different location, won't they need to do a study of that, and get an approval, we approved these locations, did we approve somewhere else?

**Commissioner Christmann:** You're talking a variance to the order if you want to be 1500 feet away.

**Commissioner Kroshus:** Well, I mean, it would be a different location, so doesn't that need to be –

**Brian Johnson:** I believe the foot print, so they may get certifications that it does not impact any avoidance areas and they could move the location without having, unless there was also an alternative tower site that was approved at the time, but, I'm sure they don't want to be taking that tower away from, I believe it was the Lennicks who own it, that's a source of income for them, so I think they would like to keep it with them, but that would've been a good one for that if

**Commissioner Fedorchak:** That's up to them.

**Commissioner Kroshus:** Yeah, I think this order just has to do with that this has to be removed.

**Brian Johnson:** Correct.

**Commissioner Kroshus:** \_And they're going to have to determine whether they rebuild elsewhere, and if they do, whether they need a certificate from us or this one covers itself.

**Commissioner Christmann:** We can't force them to remove and replace it.

**Brian Johnson:** We can ask that it be removed from that location and that it be brought into compliance, I don't think we can specify anything other than that. As long as it complies with the order and –

**Commissioner Fedorchak:** Right.

**Brian Johnson:** And the new location if it needs approval, whether certifications or if we have to actually approve a new site, yeah, but I don't think we can say you've gotta move it X amount of more feet or anything like that.

**Commissioner Christmann:** Well, you hit the nail on the head. This is a financial hit if they just take it down completely. And then – the Lennicks, correct? –

**Brian Johnson:** Yeah.

**Commissioner Christmann:** They're out.

**Brian Johnson:** Yeah.

**END AT 1:15:43.**

Simply put, the PSC adds work session clearly decided that the tower must come down, in other words be removed, that the issue of moving it to another location is not presently before the Commission and is not part of the resolution of the Kesslers' Complaint. To go beyond simply requiring removal of the tower would result in going beyond the original order, in order to which the PSC has determined Minnesota Power violated by placing the tower too close to the Kesslers' occupied residence.

**Kessler Point Number 2: The Commission at its work session recognized that if any part of the order delved into changing the location of the tower, the commission would be going beyond enforcement of the original order and would be delineating a variance or a modification of the original order, both of which would create substantial legal problems.**

The distinction between an order to remove (or take down the tower) versus ordering Minnesota Power to move it to another location would, as recognized by the PSC at the work session, create substantial legal problems. It is one thing for the PSC to enforce a previous order, and entirely another to change a previous order that

requires some additional requirements or modifications. For that reason alone, the PSC should reject any attempt by PSC staff or Minnesota Power to delve into this separate issue of where the new tower should be placed, in the event Minnesota power decides, after removing the turbine, to move it somewhere else. As repeatedly stated by Commissioner Fedorchak, “That’s up to them.” Commissioner Christmann agreed, noting that delving into the issue of ordering Minnesota Power to move the turbine to new location would constitute a variance, and would be beyond the legal authority of the PSC as it relates to the issue presently before the PSC. Thus, any attempt to create a new issue relating to the moving of the tower is both an appropriate and potentially beyond the authority of the PSC as it relates to the pending complaint. The remedy is clear, and that is simply that the tower must be taken down, that is, removed.

**Kessler Point Number 3: The Commission should not to delve into relocation of the tower because any such focus will result in an undue delay of the remedy that should be provided to the Kesslers. Moreover, if the PSC decides to delve into this thorny issue, then Minnesota Power should be required to provide answers to the questions posed by the Kesslers in the previous emails, including how quickly can the tower be removed.**

It is clear that the PSC is made his decision in favor of the Kesslers and has selected the only remedy that applies to this situation, which is taking down Tower 441. Not only is the issue of relocation inappropriate and beyond the original order and potentially beyond the legal authority of the PSC, delving into this thorny issue with unnecessarily result in substantial delay in the implementation of the remedy due to the Kesslers.

The various emails which engendered the improper resurrection of the issue already determined by the PSC and its work meeting clearly indicate how delving into this issue would not only create delay, but allow Minnesota Power to make much more complicated the simple action of taking down Tower 441.

Following the exchange of emails, the PSC staff suggested that we submit this formal brief so that the PSC becomes aware of the issues raised by both sides. To the extent necessary, we will briefly review the content of those emails so that the PSC is aware of what issues were raised therein. The emails are attached in chronological order in **ATTACHMENT 1**.

Under the auspices of determining timelines, the PSC staff sent an **email on Thursday, July 8, 2021 at 4:36 PM** stating that it would be beneficial to get some information on timelines, and focus on “moving” a wind turbine and “this construction season.” PSC staff also asked if the Kessler’s would have any objections to the turbine operating “during that time.” As noted above, any discussion relating to moving the turbine to a different location is contrary to the finding of the PSC at his work session, and potentially contrary to the law. There is a substantial distinction between enforcing a prior order, and modifying it or creating a variance to that original order. Moreover, the original question posed by PSC staff in the originating email focuses on moving the turbine, which isn’t the question at all: the question is how soon can Turbine 441 be removed. The issue of what happens to turbine 441 after is taken down is left to the company, and based on the PSC is working session, not an issue to be considered in conjunction with the Kesslers complaint. And yes, the Kesslers object strenuously to Turbine 441 operating “during that time” or any other time. As far as the Kesslers are concerned, Turbine 441 should be shut

down immediately, its blades taken off, and it deconstructed as quickly as possible, and certainly by September 30, 2021.

The second email sent **Friday, July 9, 2021 at 9:16 AM** served as the Kesslers' response to the initial PSC staff email of 7-8-21 at 4:36 PM. In that email Mr. Boughey stated as follows:

In order to properly analyze this, the PSC and the Kesslers would first need the following information from Minnesota Power:

1. How many days does it take to bring in all the equipment necessary to deconstruct a tower?
2. Once the equipment is there, how many days does it take to deconstructed tower?
3. Is it possible to deconstruct Tower 441 in the next few months?
4. How long will it take to select a new location, presumably on Mr. Lennick's land.
5. Has Minnesota power land man already obtained an easement from Mr. Lennick?
6. Is it possible to place in storage on Mr. Lennick's land the deconstructed tower?
7. Once Tower 441 is deconstructed, how much time is needed to put up Tower 441 at its new location?
8. Is it possible to deconstruct Tower 441 AND put it up at his new location in the next few months?
9. What amount of monthly compensation would the Kesslers receive while the tower remains?

The decision is that it has to come down. So the issue is really only how quickly can it be deconstructed. Any other issues relate to whatever Minnesota Power wants to do with the Tower once it is down, which frankly isn't our (PSC or Kessler) problem or concern.

I would suggest that Minnesota Power needs to get these answers to the PSC and to me by end of day today so we can analyze it. I note that only Questions 1-3 is relevant to what was decided by the PSC the other day. The other questions do not relate to the decision that was made.

Lynn

Instead of answering the questions posed that morning around 9 AM, Minnesota Power sent a lengthy email at **Friday, July 9, 2021 at 3:38 PM [Number 3 in this series]** focusing entirely on how much "that goes into moving a turbine," delving into issues such as "engineering, siding, permitting, contracting, procurement,

scheduling, and construction activities” – all the while ignoring the true issue at hand, how long will it take you to deconstruct Turbine 441.

In response, Mr. Boughey sent a lengthy email at **Monday, July 12, 2021 at 8:27 PM** [**Number 4** in this series] indicating that the issue is not about **moving** Turbine 441 but we **removing** Turbine 441, that Minnesota power should be able to take down that turbine within 90 days, and that once again Minnesota power assumes incorrectly that the house is empty and not being used:

I fail to understand why you are asking Minnesota Power anything about moving turbine 441. At the meeting of the public service commission it was clear that the remedy they selected was not moving, but **removing** turbine 441. The Commissioner specifically stated that what Minnesota power decides to do with the turbine was not before the public service commission and was not going to be resolved by the commission. I would assume that your role is to implement the public service commission's decision, which would not include any aspect of where turbine 441 ends up.

Minnesota power was able to put up something like 70 towers during 2 summers. I fail to understand why they wouldn't be able this summer to take down one tower, which is the only thing issue at this moment. In my view, Minnesota power should be given 90 days in which to deconstruct the tower. If they end up putting it somewhere else to siding or whatever, so be it, but that is not a present concern, and that is not a factor that is applicable at this time.

As far as we are concerned, the public service commission has decided that turbine 441 was improperly placed near the Kessler residence, and every day remains there creates further injury to the Kessler's, their enjoyment of the property, and their use of the property. Tower 441 is presently devaluing the Kessler's property, and continues to devalue the customer's property as long as it is there.

None of these other issues relating to siding or moving it to another location are presently applicable based on the fact that the public service commission decided that the tower must be removed.

Important: Minnesota Power assumes (ironically, once again) that the house is empty. It is not. Keith has advised me

“Stephen and his family are using the house all summer since May until Labor Day, after that we will begin our fall vaccination program on our cattle and don’t want the turbine running. If there tower needed repairs they wouldn't let it go until next year so this is no different. If we didn’t mind it running we wouldn’t have filed a complaint! Also now with it being dry is perfect road conditions, no load restrictions or frost to deal with. 90 days to take it down, also the gravel roads will have to be watered starting when the pavement ends, when they start bringing trucks in hauling the Crain in and out , all traffic.”

My clients are insistent. They want it taken down. They want the turbine to quit turning on Wednesday, the moment the Order is signed. 90 days should be more than sufficient to take it down.

Lynn

The subsequent emails related to PSC staff stating the information provided should be sufficient, and the findings of fact, conclusions of law, and order might not make Wednesday’s meeting [Email 5 in the series], and Mr. Boughey’s request to know if it will make the meeting because the Kesslers and their lawyer intended on attending [Email 6 in the series].

Concerned that the direction being taken was focusing on an incorrect issue and causing needless delay regarding the removal of Turbine 441, Mr. Boughey sent an email at **Monday, July 12, 2021 at 9:38 AM** [Number 7 in this series] indicating that Minnesota Power

has still not informed the PSC how much time it would take down and remove the tower and has instead sidestep the issue by focusing on relocating the tower. Mr. Boughey went on to suggest that the PSC should ask Minnesota Power precisely how much time it needs to deconstruct the tower and if it is possible to terminate the movement of the blades until the tower is removed.

Instead of requiring Minnesota power to answer the questions needed to determine the time necessary to deconstruct Tower 441, PSC staff at **Monday, July 12, 2021 at 9:41 AM [Number 8** in this series] requested that “both parties provide a brief filing on moving/removing the tower.” The next two emails **Monday, July 12, 2021 at 9:43 AM and 10:23 AM [Number 9 & 10** in this series] related to what precisely was being asked, how would be filed, and providing a deadline of 10 days, while at the same time leaving it to each of the parties “what information you would like to provide.”

On **Tuesday, July 20, 2021 at 10:20 AM [Number 11** in this series] Mr. Boughey informed the PSC – with cc to Minnesota Power – that Minnesota Power has a contractor in the area with a crane changing bearings, that the crane is located at Tower 439 just one-half

mile from Tower 441, and asserted that Minnesota Power “should be able to get 441 down within a week or two of today’s date [and at] the very least they can take down the blades and make it in operative and take the rest down later.”

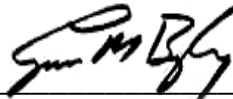
### **Conclusion**

It is clear that Minnesota Power is slow rolling this entire process, and taking advantage of the introduction of a nonissue, relocating Tower 441. Mr. Boughey in one of the emails specifically requested that Minnesota Power state with particularity how quickly it could deconstruct or remove the tower. Instead of answering the question, Minnesota Power instead focused on how long it would take to move the tower to a different location, thus demonstrating that it intends to use the issue of “move versus remove” to delay and complicate the simple act of taking the tower down. Mr. Boughey requested that in conjunction with the emails initiated by the PSC staff that the PSC require answers to the questions relating to how quickly Minnesota Power could deconstruct the tower at issue. Unfortunately, Minnesota Power has not been required to provide any information, and continues to sidestep the primary issue at hand, which is merely,

how soon can you deconstruct and remove Tower 441. Weeks of now gone by, and as a matter of fact there is already a crane located at Tower 439 doing maintenance work, just one-half mile from Tower 441.

In the Kesslers' view, and given the fact that Minnesota Power was able to erect some 72 towers in two summers, Minnesota Power should be required to remove Tower 441 on or before September 30, 2021. Simply put, the Kessler's want the tower gone this summer.

Dated this 22<sup>nd</sup> day of July, 2021.



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Lynn Boughey (#04046)  
Attorney for Keith and Deanna  
Kessler  
lynnboughey@midconetwork.com  
P.O. Box 1202  
Mandan, ND 58554-1202  
(701) 751-1485

**lynnboughey@midconetwork.com**

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**From:** Johnson, Brian L. <brjjohnson@nd.gov>  
**Sent:** Thursday, July 8, 2021 4:36 PM  
**To:** Smith, Mollie; lynnboughey@midconetwork.com; Mahlberg, Patrick  
**Cc:** Schuh, John M.  
**Subject:** Input

All,

In working on the order it would be beneficial if I could get some information on timelines. I know moving a wind turbine cant happened quickly and there probably isn't enough time to complete it in this construction season. What are thoughts on it being given a deadline of end of construction season next year.

Also what are thoughts on continuing to allow the turbine to operate during that time? I am sure Minnesota Power would prefer that but wondering if the Kesslers would be fine with it operating until it can be moved.

If anyone else has any other suggestions to make the best order that prevents any further potential future issues, please bring them up.

Thanks in advance,

Brian Johnson  
Special Assistant Attorney General  
**NORTH DAKOTA PUBLIC SERVICE COMMISSION**

600 E Boulevard Ave. Dept 408 | Bismarck, ND 58505-0060  
p: 701-328-2407 | <https://www.psc.nd.gov>

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[lynnboughey@midconetwork.com](mailto:lynnboughey@midconetwork.com)

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**From:** lynnoughey@midconetwork.com  
**Sent:** Friday, July 9, 2021 9:16 AM  
**To:** 'Johnson, Brian L.'  
**Cc:** 'Schuh, John M.'; 'Smith, Mollie'; 'Mahlberg, Patrick'  
**Subject:** RE: KESSLER MINN POWER Input

In order to properly analyze this, the PSC and the Kesslers would first need the following information from Minnesota Power:

1. How many days does it take to bring in all the equipment necessary to deconstruct a tower?
2. Once the equipment is there, how many days does it take to deconstructed tower?
3. Is it possible to deconstruct Tower 441 in the next few months?
4. How long will it take to select a new location, presumably on Mr. Lennick's land.
5. Has Minnesota power land man already obtained an easement from Mr. Lennick?
6. Is it possible to place in storage on Mr. Lennick's land the deconstructed tower?
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8. Is it possible to deconstruct Tower 441 AND put it up at his new location in the next few months?
9. What amount of monthly compensation would the Kesslers receive while the tower remains?

The decision is that it has to come down. So the issue is really only how quickly can it be deconstructed. Any other issues relate to whatever Minnesota Power wants to do with the Tower once it is down, which frankly isn't our (PSC or Kessler) problem or concern.

I would suggest that Minnesota Power needs to get these answers to the PSC and to me by end of day today so we can analyze it. I note that only Questions 1-3 is relevant to what was decided by the PSC the other day. The other questions do not relate to the decision that was made.

Lynn

[lynnboughey@midconetwork.com](mailto:lynnboughey@midconetwork.com)

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**From:** Smith, Mollie <msmith@fredlaw.com>  
**Sent:** Friday, July 9, 2021 3:38 PM  
**To:** Johnson, Brian L.; lynnboughey@midconetwork.com; Mahlberg, Patrick  
**Cc:** Schuh, John M.  
**Subject:** RE: Input

Brian:

Thanks for your email. We have discussed the issue with Minnesota Power and offer the following for consideration at this time.

You are correct that there is a lot that goes into moving a turbine, including but not limited to engineering, siting, permitting, contracting, procurement, scheduling, and construction activities. As an initial matter, significant portions of this work are done by the OEM (Siemens), and other firms (e.g., BOP contractor). It is the middle of construction season throughout North America and this project is not on Siemens' or any of the other necessary contractors' calendars. Relocating a single turbine is an atypical project and a more formal analysis by both Minnesota Power and Siemens is needed to firm up any timelines (confirming availability of the necessary expert personnel and specialized equipment and materials involved), let alone contracting for them, but Minnesota Power understands that relocating Turbine 441 is not an activity that can take place in 2021.

Minnesota Power understands from the evidence in the case that there is no one living at the residence. Assuming that no one will be occupying the residence between now and when Turbine 441 is relocated, then, yes, as you put it, Minnesota Power would prefer to continue operating the turbine until it is removed. If Minnesota Power were not allowed to continue normal operations until the turbine is moved, other options include: (i) operating with the shadow flicker system (described in Minnesota Power's testimony) installed; (ii) operating only during nighttime hours (and being "idled" during daytime hours), which likely could be accomplished with addition of the shadow flicker system (subject to confirmation from Siemens); (iii) idling the turbine while Kesslers are on site (with advance-enough notice from Kesslers to Minnesota Power); or (iv) idling the turbine until it is relocated. Idling is safer than completely shutting off the wind turbine. With idling:

- Wind turbine will not generate power.
- Power will still be supplied to the wind turbine.
  - Keeps communications, safety functions, yaw system, and lubrication systems operable.
  - Allows operator to monitor turbine condition, check status, and receive alarms remotely.
  - Maintains the electrical power supply to the wind turbine's electrical components, preventing condensation from occurring during cold weather which can damage the electronics.
- Yaw system will turn the turbine nacelle/rotor to face the wind.
  - Prevents excessive loads/stresses on the wind turbine from high winds.
  - The turbine manufacturer does not allow the yaw system to be locked if winds exceed 18 m/s (40 mph).
- Blades pitch out of the generating position. Rotor is not locked and allowed to rotate very slowly (~1 rpm) in the wind.
  - Prevents excessive loads/stresses on the wind turbine from high winds.
  - The turbine manufacturer does not allow the rotor to be locked if winds exceed 18 m/s (40 mph) average over a ten minute period.
  - Prevents extended stand-still conditions that can damage the main bearing. The turbine manufacturer's policy is to limit rotor lockout to no more than 3 consecutive days.

Thanks.

lynnboughey@midconetwork.com

**From:** lynnboughey@midconetwork.com  
**Sent:** Monday, July 12, 2021 8:27 AM  
**To:** 'Johnson, Brian L.'  
**Cc:** 'Schuh, John M.'; 'Smith, Mollie'; 'Mahilberg, Patrick'; 'Boughey Law Firm'  
**Subject:** RE: KESSLER MINNESTOA POER Input - Kessler want the tower taken down within 90 days, what they do with it is not our concern

Brian -

Please see this email and the previous one I submitted Friday 7-9-21 at 916 am.

I fail to understand why you are asking Minnesota Power anything about moving turbine 441. At the meeting of the public service commission it was clear that the remedy they selected was not moving, but **removing** turbine 441. The Commissioner specifically stated that what Minnesota power decides to do with the turbine was not before the public service commission and was not going to be resolved by the commission. I would assume that your role is to implement the public service commission's decision, which would not include any aspect of where turbine 441 ends up.

Minnesota power was able to put up something like 70 towers during 2 summers. I fail to understand why they wouldn't be able this summer to take down one tower, which is the only thing issue at this moment. In my view, Minnesota power should be given 90 days in which to deconstruct the tower. If they end up putting it somewhere else to siding or whatever, so be it, but that is not a present concern, and that is not a factor that is applicable at this time.

As far as we are concerned, the public service commission has decided that turbine 441 was improperly placed near the Kessler residence, and every day remains there creates further injury to the Kessler's, their enjoyment of the property, and their use of the property. Tower 441 is presently devaluing the Kessler's property, and continues to devalue the customer's property as long as it is there.

None of these other issues relating to siding or moving it to another location are presently applicable based on the fact that the public service commission decided that the tower must be removed.

Important: Minnesota Power assumes (ironically, once again) that the house is empty. It is not. Keith has advised me

"Stephen and his family are using the house all summer since May until Labor Day, after that we will begin our fall vaccination program on our cattle and don't want the turbine running. if there tower needed repairs they wouldn't let it go until next year so this is no different. If we didn't mind it running we wouldn't have filed a complaint! Also now with it being dry is perfect road conditions, no load restrictions or frost to deal with. 90 days to take it down, also the gravel roads will have to be watered starting when the pavement ends, when they start bringing trucks in hauling the Crain in and out , all traffic."

My clients are insistent. They want it taken down. They want the turbine to quit turning on Wednesday, the moment the Order is signed. 90 days should be more than sufficient to take it down.

Lynn

5

**lynnboughey@midconetwork.com**

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**From:** Johnson, Brian L. <brljohnson@nd.gov>  
**Sent:** Monday, July 12, 2021 8:59 AM  
**To:** lynnboughey@midconetwork.com  
**Cc:** Schuh, John M.; 'Smith, Mollie'; 'Mahlberg, Patrick'; 'Boughey Law Firm'  
**Subject:** RE: KESSLER MINNESTOA POER Input - Kessler want the tower taken down within 90 days, what they do with it is not our concern

The input provided by all should be sufficient for me. The findings of fact, conclusion of law, and order might not make Wednesday's meeting.

Brian

6

**lynnboughey@midconetwork.com**

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**From:** lynnboughey@midconetwork.com  
**Sent:** Monday, July 12, 2021 9:15 AM  
**To:** 'Johnson, Brian L.'  
**Cc:** 'Schuh, John M.'; 'Smith, Mollie'; 'Mahlberg, Patrick'; 'Boughey Law Firm'  
**Subject:** RE: KESSLER MINNESTOA POER Input - Kessler want the tower taken down within 90 days, what they do with it is not our concern

When will you know if it will make the meeting. The Kesslers and I were planning on attending.

Lynn

7

**lynnboughey@midconetwork.com**

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**From:** lynnboughey@midconetwork.com  
**Sent:** Monday, July 12, 2021 9:38 AM  
**To:** 'Johnson, Brian L.'  
**Cc:** 'Schuh, John M.'; 'Smith, Mollie'; 'Mahlberg, Patrick'; 'Boughey Law Firm'  
**Subject:** RE: KESSLER MINNESTOA POER Input - the essential question has not been asked, nor has Minn Power provided an answer to that essential question

Brian –

I do not believe the input provided is sufficient – Minn Power has not advised you the amount of time it will take to take down and remove the tower – instead the company has side-stepped the essential question by providing only information relating to moving the tower to another location.

The PSC was quite clear at its last meeting, that the remedy is taking the tower down, and the members of the PSC at that meeting also made it very clear that what Minn Power does with the tower is not at issue and not being addressed in conjunction with the resolution of the Kessler complaint.

I would respectfully suggest the counsel for the PSC ask Minn Power precisely how much time it needs to deconstruct Tower 411, and if it is possible to terminate the movement of the blades until the tower is removed.

Lynn

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**lynnboughey@midconetwork.com**

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**From:** Johnson, Brian L. <brljohanson@nd.gov>  
**Sent:** Monday, July 12, 2021 9:41 AM  
**To:** lynnboughey@midconetwork.com  
**Cc:** Schuh, John M.; 'Smith, Mollie'; 'Mahlberg, Patrick'; 'Boughey Law Firm'  
**Subject:** RE: KESSLER MINNESTOA POER Input - Kessler want the tower taken down within 90 days, what they do with it is not our concern

Could both parties provide a brief filing on moving/removing the tower. A filing gives me a basis for the commission's decision on when/how that happens.

As far as when I will know it will be on Wednesday's agenda, I don't know.

Brian

**lynnboughey@midconetwork.com**

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**From:** Smith, Mollie <msmith@fredlaw.com>  
**Sent:** Monday, July 12, 2021 9:43 AM  
**To:** Johnson, Brian L; lynnboughey@midconetwork.com  
**Cc:** Schuh, John M.; Mahlberg, Patrick; 'Boughey Law Firm'  
**Subject:** RE: KESSLER MINNESTOA POER Input - Kessler want the tower taken down within 90 days, what they do with it is not our concern

Brian:

To confirm, do you want us to put the information we provided via e-mail in a letter and file it in the docket? Just want to make certain we are on the same page.

Thanks.

Mollie

**lynnboughey@midconetwork.com**

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**From:** Johnson, Brian L. <brjohnson@nd.gov>  
**Sent:** Monday, July 12, 2021 10:23 AM  
**To:** Smith, Mollie; lynnboughey@midconetwork.com  
**Cc:** Schuh, John M.; Mahlberg, Patrick; 'Boughey Law Firm'  
**Subject:** RE: KESSLER MINNESTOA POER Input - Kessler want the tower taken down within 90 days, what they do with it is not our concern

I will leave it to you on what information you would like to provide, but the goal is for the information to be part of the record so the commissions decision is based on the record. A deadline of 10 days should be adequate.

I hope that answers your question.

Brian

**lynnboughey@midconetwork.com**

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**From:** lynnboughey@midconetwork.com  
**Sent:** Tuesday, July 20, 2021 10:20 AM  
**To:** 'Johnson, Brian L.'  
**Cc:** 'Schuh, John M.'; 'Smith, Mollie'; 'Mahlberg, Patrick'; 'Boughey Law Firm'  
**Subject:** RE: KESSLER MINNESTOA PORER - CRANE WILL BE AT 439 THIS WEEK, 441 SHOULD BE TAKEN DOWN SAME TIME

Hello everyone -

It is my understanding that Minnesota Power has a contractor in the area with a crane changing bearing's.

They dropped of crane parts Thursday afternoon by tower 439 just a half mile from 441 , they have to remove blade's and hub to get the bearing off.

It seems to me that as soon as I get done with tower 439, Minnesota power needs to go over to 441 and dismantled it.

They should be able to get 441 down with a week or two of today's date. At the very least they can take down the blades and make it inoperative and take the rest down later.

Lynn