

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
NORTHWESTERN DIVISION**

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|---|---|-------------------------------|
| David Houle and Becky Houle, et. al., |) | |
| |) | |
| Plaintiffs, |) | ORDER RE PARTIAL |
| |) | CONSOLIDATION OF CASES |
| vs. |) | |
| |) | |
| Central Power Electric Cooperative, Inc., |) | |
| (CPEC), et. al., |) | Case No. 4:09-cv-021 |
| |) | |
| Defendants. |) | |
| CPEC vs. |) | Case No. 4:11-cv-055 |
| Cecil L. Jeannotte, et. al., |) | |
| CPEC vs. |) | Case No. 4:11-cv-061 |
| Corey J. Hall, et. al., |) | |
| CPEC vs. |) | Case No. 4:11-cv-073 |
| Cecil L. Jeannotte, et. al., |) | |
| CPEC vs. |) | Case No. 4:11-cv-076 |
| Howard Longie, et. al., |) | |
| CPEC vs. |) | Case No. 4:11-cv-077 |
| Est of Marie M. Jeanotte, et. al., |) | |
| CPEC vs. |) | Case No. 4:11-cv-078 |
| Donna M. Anderson, et. al., |) | |
| CPEC vs. |) | Case No. 4:11-cv-084 |
| Pete Barnett, et. al., |) | |
| CPEC vs. |) | Case No. 4:11-cv-098 |
| John E. Monette, et. al., |) | |
| CPEC vs. |) | Case No. 4:11-cv-100 |
| Ophelia Dixon Navarro, et. al., |) | |
| CPEC vs. |) | Case No. 4:11-cv-101 |
| Kimberly Blackwell, et. al., |) | |
| CPEC vs. |) | Case No. 4:12-cv-004 |
| Dustin Decoteau, et. al., |) | |
| CPEC vs. |) | Case No. 4:12-cv-005 |
| Nick K. Wilkie, et. al., |) | |
| CPEC vs. |) | Case No. 4:12-cv-006 |
| Gloria Davis, et. al., |) | |

The court previously ordered the partial consolidation of twelve cases that involve

condemnation of easements for a 69 kV high-voltage power line across portions of the Turtle Mountain Indian Reservation.

CPEC has filed two additional condemnation actions – CPEC v. Nick Wilkie, et. al., Case No. 4:12-cv-005, and CPEC v. Gloria Davis, et. al., Case No. 4:12-cv-006 – that involve the condemnation of easements for the same powerline.

The court, on its own motion, **ORDERS:**

- 1 The above captioned cases are consolidated for the limited purposes of briefing and conducting a joint trial on the issues of “use and necessity” as well as for briefing of issues that are common to all of the cases that the court may identify. The parties may use a joint caption for such purposes, but, absent further direction from the court, the pleadings shall be filed electronically in all cases in which the pleadings apply.
2. In all of the cases where the issues of “use and necessity” are an issue or where the parties otherwise contest the right of Central Power to maintain its 69 kV line on their property, the parties shall have until July 1, 2012, to file a brief on the issue of whether or not the court may consider these issues. If the court decides that a trial is necessary on the issues of “use and necessity” and the right of Central Power to maintain its line in the location where it has been constructed, a joint court trial will be conducted on those issues beginning on November 13, 2013, at 9:30 a.m. at the United States Courthouse in Bismarck, North Dakota. Currently, five days have been set aside for the trial.
3. In addition, the court has identified another common issue that the parties should

submit a brief with respect to on or before July 1, 2012. The issue is whether 25 U.S.C. § 357 has been superseded by the provisions of Fed. R. Civ. P. 71.1 with respect to the incorporation of state law. A number of courts have ruled in other contexts that federal statutes incorporating state condemnation procedures have been superseded. E.g., 26 East Tennessee Natural Gas Co. v. Groforth, 361 F.3d 814, 822 (4th Cir. 2004).

4. The court shall in the future file a separate scheduling order in each case where no scheduling and discovery deadlines have been established.

Dated this 27th day of March, 2012.

/s/ Charles S. Miller, Jr. _____
Charles S. Miller, Jr.
United States Magistrate Judge