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**PUBLIC SERVICE COMMISSION** BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF NORTH DAKOTA

APPLICATION TO THE NORTH DAKOTA )  
PUBLIC SERVICE COMMISSION FOR A )  
WAIVER OF PROCEDURES AND TIMELINES, )  
AND CONSOLIDATED CERTIFICATE OF )  
CORRIDOR COMPATABILITY AND ROUTE )  
PERMIT, PILLSBURY-FARGO GENERATION )  
OUTLET PROJECT )

Docket No. PU-08-48

**OBJECTION BY MINNKOTA POWER COOPERATIVE, INC. TO  
INTERVENTION BY RES AMERICAS DEVELOPMENT INC. AND  
PEAK WIND DEVELOPMENT LLC AND BURCHILL FARMS INCORPORATED**

Minnkota Power Cooperative (Minnkota) objects to the May 5, 2008 amended petition to intervene made in this proceeding by RES Americas Development Inc. (RES Americas), PEAK Wind Development LLC (PEAK Wind) and Burchill Farms Incorporated (Burchill Farms). This is the second effort by RES Americas and PEAK Wind to intervene in this proceeding; their April 9, 2008 petition to intervene was denied by the Public Service Commission of North Dakota (Commission). This is the first effort for Burchill Farms, and it is clear that RES Americas and PEAK Wind are trying to piggy-back on Burchill Farms' request to participate. For all the reasons discussed herein and for the reasons set out in the earlier objection to intervention filed by Minnkota with regard to the first petition of RES Americas and PEAK Wind, none of the three petitioners makes a valid case for intervening in this docket, particularly at this late date.

The petition to intervene by the petitioners in all three instances fails to satisfy the Commission's express requirements for intervention. NDAC 62-02-02-05 provides:

Any person with a substantial interest in a proceeding may petition to intervene in that proceeding by complying with this section. An intervention may be granted if the petitioner has a statutory right to be a party to the proceeding; or the petitioner has a legal interest which may be substantially affected by the proceeding, and the intervention would not unduly broaden the issues or delay the proceeding. The commission may impose conditions and limitations on an intervention to promote the interests of justice.

1. Contents of petition to intervene. A petition to intervene must be in writing and must set forth the grounds for intervention, the position and interest of the petitioner in the proceeding, what the petitioner would contribute to the hearing, and whether the petitioner's position is in support of or in opposition to the relief sought.
2. When filed. A petition to intervene in any proceeding must be filed at least ten days prior to the hearing, but not after except for good cause shown.
3. Number of copies. The petitioner will serve a copy of the petition on each party to the proceeding and will file with the commission the original and seven copies.
4. Effect. Admission as an intervenor shall not be construed as recognition by the commission that such intervenor might be aggrieved by an order of the commission in such proceeding.

In paragraph 11 of the petition, the three petitioners assert they have a legal interest which may be substantially affected by the April 17, 2008 amended application. (Any reference to the April 17, 2008 amended application should also refer to the March 14, 2008 application, in the view of Minnkota.) None of the petitioners herein claims a statutory right to intervene. The only "legal interest" set out by PEAK Wind and RES Americas in this portion of the brief is that PEAK Wind is comprised of North Dakota citizens, RES Americas is an industry leader in wind generation, and the proposed transmission line is built on land owned by Burchill Farms. Thus, the Amended Petition offers a new justification for intervention not included in the earlier effort rejected by the PSC: Burchill Farms' status as a landowner on the route of the proposed line. The other intervenors clearly hope that this will open the door for Burchill Farms, and that they

can walk through, as well, because the first two assertions were made in the initial petition for intervention and were not found to be sufficient to provide for intervention. The petitioners broadly state they will not unduly broaden the issues and they will not seek to extend or delay the hearing, but to discuss the above could result in both.

Contrary to the allegations of the Amended Petition, Burchill Farms does not own property along the route of the Pillsbury-Fargo Generation Outlet Project. Burchill Farms does own property in Section 9, but that property is no longer on the route of the proposed transmission line. Minnkota will present a minimally changed route for the PSC's consideration at the public hearing on May 22, 2008. Minnkota was unable to negotiate an option to place the Generation Outlet line on the Burchill Farms property. Minnkota has not signed an option with Burchill Farms, and Burchill Farms has been unwilling to cooperate in siting the route on its land. Minnkota has entered into an option to purchase agreement dated April 30, 2008 with Fred & Ray LLP, a North Dakota Limited Liability Partnership of Fargo, ND that owns the land across the road from Burchill Farms. The route then will proceed in property adjacent to and along the south side of the road on the Fred & Ray property, as opposed to on the north side of the road in the Burchill Farms property. Pertinent parts of the option to purchase agreement are attached hereto.

The remainder of the allegations in the Amended Petition are, by and large, a recasting of arguments the PSC has already rejected. For example, in Paragraphs 31 and 32 of the Amended Petition, Burchill Farms indicates that the reason it should be allowed to participate in this proceeding is not that it objects to the siting of the lines, but rather that, in its view, the proposed transmission lines that do not have sufficient capacity to include energy that might be generated

by the PEAK Wind project and RES Americas (neither of which presently generates wind energy). This is not a valid basis for intervention.

The threshold for a successful intervention requires that Burchill Farms “. . . must indicate what the petitioner could contribute to the hearing.” There is nothing relevant in its position that PEAK Wind energy should be on the line and that, if it is served by the line, then Burchill Farms could be supportive of the route. If information of that sort is offered at the public hearing, it would be deemed irrelevant to the issue of whether the corridor is proper and the route is correct. There is no authority for the PSC to decide whether two entities that do not produce electricity should be served by a line that is already subscribed.

As noted, the PSC has already ruled on the essential contentions set forth by RES Americas and PEAK Wind. In its order denying intervention dated April 23, 2008, the PSC found that those complaints regarding the ten-year plan are not a problem and should not be a concern, and the PSC ruled the interconnection issue was not part of the application process and not a basis for intervention. Both of those assertions are raised in this second intervention request by RES Americas and PEAK Wind.

Further, questions of need are not addressable in applications for a corridor certificate or a route permit. The Supreme Court of North Dakota has found that “until the legislature specifically directs the PSC to use the information to evaluate the need for a line, the PSC believes it does not have the authority to do so.” It goes on to say: “we found no direction in the siting act or its legislative history giving the PSC the authority to determine if a need has been shown”. Nebraska Public Power District for Certificate of Corridor Compatibility for a 500 KBAC Electric Transmission Facility Extending from the Canadian Border near Cavalier, ND to the South Dakota board near Forman, ND, 330 N.W.2d 143 (Feb. 1983).

The Amended Petition tries to disguise need questions – which are clearly beyond the scope of this case – as something else. For example, the petitioners contend the Generation Outlet line is not large enough to accommodate all the wind projects being constructed in the area by wind power is such a reference. The PSC in this application for a corridor and route cannot make, nor should it consider, the question. To permit testimony with regard to the capacity of the transmission lines would serve to unduly and illegally broaden the issues that need to be addressed and result in a request for additional discovery which would trigger an undue delay.

As a further “need” related argument, the petitioners indicate that transmission lines are not being developed in an orderly manner and that somehow there will be a “hodgepodge of multiple high voltage transmission lines crisscrossing farmland”. Even if that were true, it is not a subject for this proceeding. The PSC’s responsibility is to certify a corridor and permit a route, and not to be distracted in this proceeding with “a hodgepodge of multiple high voltage transmission lines” for projects that might be built. The real and current interests of Minnkota should be the focus.

In Paragraph 13 of the petition, PEAK Wind and RES Americas indicate that somehow they are impacted by the proposed transmission line cutting across property owned by Burchill Farms. As indicated before, the transmission line’s route no longer crosses property owned by Burchill Farms. As indicated, Minnkota has purchased an option from other parties and will avoid Burchill Farms. Neither PEAK Wind nor RES Americas should be able to “bootstrap” their intervention request upon the Burchill Farms request. None of the three should be permitted to intervene.

Paragraph 17 of the petitioners' brief addresses what it refers to as five criteria in 49-22-09, NDCC. The statute refers to those five items as factors. To address them otherwise and call them criteria is confusing because the applicable "criteria" are set out in 49-22 and 69-06-08. The other items set out in the paragraph are conclusory, suggesting somehow that builders of transmission facilities might construct more transmission lines than they need. They claim that has an adverse direct and indirect environmental effect and claim that somehow this complaint should result in intervenor status. The bare conclusory statement does not arise to that level and would provide nothing relevant or of value at a hearing on this matter.

In Paragraph 18, the petitioners complain that there is no clear indication in the application or the amended application of need, i.e., the harm that may befall them at some point in the future if they are unable to connect to the Minnkota Generation Outlet line. The Nebraska Power case makes it clear there is no needs analysis required by our statute. The PSC could only listen to information of the sort suggested it could not take any affirmative action as an entity. The information would not have any bearing on corridor or on route as it is planned in this instance.

The same is true in Paragraph 19. PEAK Wind, RES Americas and Burchill Farms speak in terms of "winners and losers" in regard to getting on and not getting on a transmission line. Those questions are not for this proceeding, and in the case of RES Americas and PEAK Wind, a discussion of "winners and losers" can only be conducted in the abstract as neither have demonstrated their capacity to produce electricity in a time frame that is meaningful to Minnkota's project.

The contention by RES Americas and PEAK Wind with regard to MISO and the application made to it was addressed by the PSC in its order denying intervention. It should be denied for that reason again.

In Paragraphs 22, 23 and 24, there is a discussion of ten-year plans. The PSC in its order denying intervention determined in this case there is no need to update the ten-year plan, except on its normal updating schedule. That is not a sufficient reason for intervention.

At Paragraph 25 of the petition, the petitioners complain that there is no discussion of need for the facility in the application and the amended application. The petitioners assert that there is only one sentence contained in the application. That is just not true. The application and the amendment each contain paragraphs with regard to the need provision. The need analysis is adequate for this application purpose. It is not the need analysis as set out in Nebraska Public Power District, which, of course, is not required in North Dakota for the siting of a corridor or permitting of a route.

Lastly, Minnkota notes that none of the petitioners sets out in the Amended Petition in writing its position and interest in the proceeding. There is no information on whether the corridor and the route are appropriate and if not, why not. To merely state they object is not enough to trigger intervention. Along the same line, for Burchill Farms to object because the line does not provide for PEAK Wind and RES Americas is not enough to trigger intervention.

In summary, there is no statutory right for any of the petitioners to be intervenors in this case. None of the petitions has a legal interest which may be substantially affected by the proceeding and if any of the three were included, would unduly broaden the issues and delay the proceeding. There is nothing contained within the petition which indicates what it is petitioners

would "contribute to the hearing". An indication of what their contribution might be is a requirement of the intervention rule 69-02-02-05.

The intervention of PEAK Wind Development LLC, Burchill Farms Incorporated, and RES Americas Inc. should be denied.

Dated at Bismarck, ND this 8 day of May, 2008.

PEARCE & DURICK

By 

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JEROME C. KETTLESON, # 03095  
Individually and as a Member of the Firm  
Attorneys for Minnkota Power Cooperative  
P.O. Box 400  
Bismarck, ND 58502-0400  
(701) 223-2890

CHI-1647462v1

**PILLSBURY TO FARGO GENERATION OUTLET PROJECT  
OPTION TO PURCHASE EASEMENT  
Electric Transmission Line**

KNOW ALL MEN BY THESE PRESENTS, That the undersigned **Fred & Ray, LLP**, a **North Dakota limited liability partnership**, of **Fargo, North Dakota**, herein called "Grantor", for and on behalf of Grantor and Grantor's heirs, successors and assigns does hereby grant to **Minnkota Power Cooperative**, 1822 Mill Road, P.O. Box 13200, Grand Forks, North Dakota 58208, its successors and assigns, herein called "Grantee", the sole and exclusive option (the "Option") to purchase an easement for the construction, operation, and maintenance of a proposed electric transmission line (the "Easement"), as more fully described in Exhibit A, as part of Grantee's proposed electric transmission line project (the "Project"), which Option shall pertain to the following described property, in **Barnes County, North Dakota**, to wit:

**The North Half of the North Half (N ½ N ½) of Section Sixteen (16), in Township One Hundred Forty-three (143) North, of Range Fifty-six (56) West of the Fifth Principal Meridian.**

Which strip of land to be located more specifically as follows:

**62.50 feet on each side of a line commencing at the Northwest corner of said Section 16; thence South 01 degree 52 minutes 22 seconds East assumed bearing along the West line of said Section 16 for a distance of 95.50 feet to the Point of Beginning; thence North 87 degrees 56 minutes 48 seconds East for a distance of 5227.52 feet to the East line of said Section 16 and there terminate.**

(the "Property");

On the following terms and conditions:

said real estate, and further agree that without Grantor's objection a Court of competent jurisdiction may issue a temporary injunction prohibiting Grantor from conveying fee title or any portion thereof, conveying any leasehold interest in, or encumbering said real estate. Grantor further agrees to pay any attorney's fees or other costs incurred by Grantee in enforcing this contract.

6. Encumbrances and Leases. During the Option Term, Grantor shall have the right to mortgage, lease, or otherwise encumber the property only if such mortgage, lease or encumbrance is subordinate to the rights of the Grantee under this Option agreement.
7. Right of Entry. During the Option Term and prior to the Rights of Easement Agreement, Grantee, its employees, agents and representatives shall have the right and license to enter upon the Real Property for the purpose of doing those things reasonably convenient or necessary to study, survey, test and plan for the development of its project, including but not limited to, conducting a feasibility study which may cover such subjects as soil conditions, geological tests, engineering reports, topographic studies, flood protection, environmental impact reports, zoning and planning regulations, and any other tests and studies which the Grantee may elect to perform on the Property, all at the sole cost and expense of the Grantee.
8. Damage Settlement. Grantee hereby agrees to pay to the undersigned and/or the tenant in possession of the Property a settlement of all damages to the Property and crops growing thereon as such Property and crops affected by the right of entry specified in paragraph seven of this Option agreement.
9. A Notice of Option reflecting this Option agreement is authorized by Grantor to be filed with the County Register of Deed's office.

IN WITNESS WHEREOF, the Grantor has executed this Option this 30<sup>th</sup> day of APRIL, 2008.

In the presence of:

Vicki Herdrich

Vicki Herdrich

Grantor(s)

By: [Signature]

Its: Partner

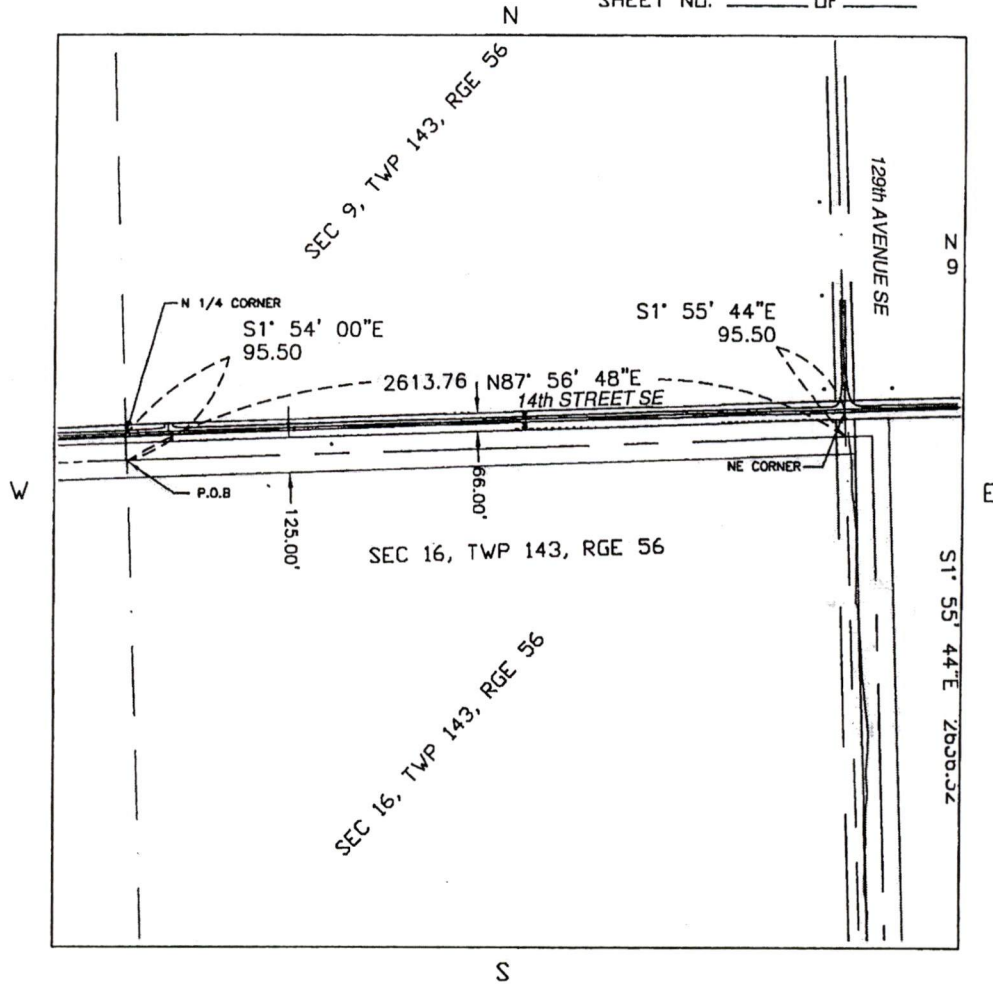
By: [Signature]

Its: Partner

Fred & Ray, LLP

SCALE: Section 1" = 500'

SHEET NO. \_\_\_\_\_ OF \_\_\_\_\_



DESCRIPTION NE 1/4 SEC. 16 TWP. 143N R. 56W  
 COUNTY BARNES STATE NORTH DAKOTA  
 OWNER FRED & RAY LLP ADDRESS \_\_\_\_\_  
 TRANSMISSION FACILITY: PILLSBURY-FARGO 230 KV GENERATION OUTLET  
 W. D. NO. \_\_\_\_\_ DATE \_\_\_\_\_ SIGNED \_\_\_\_\_

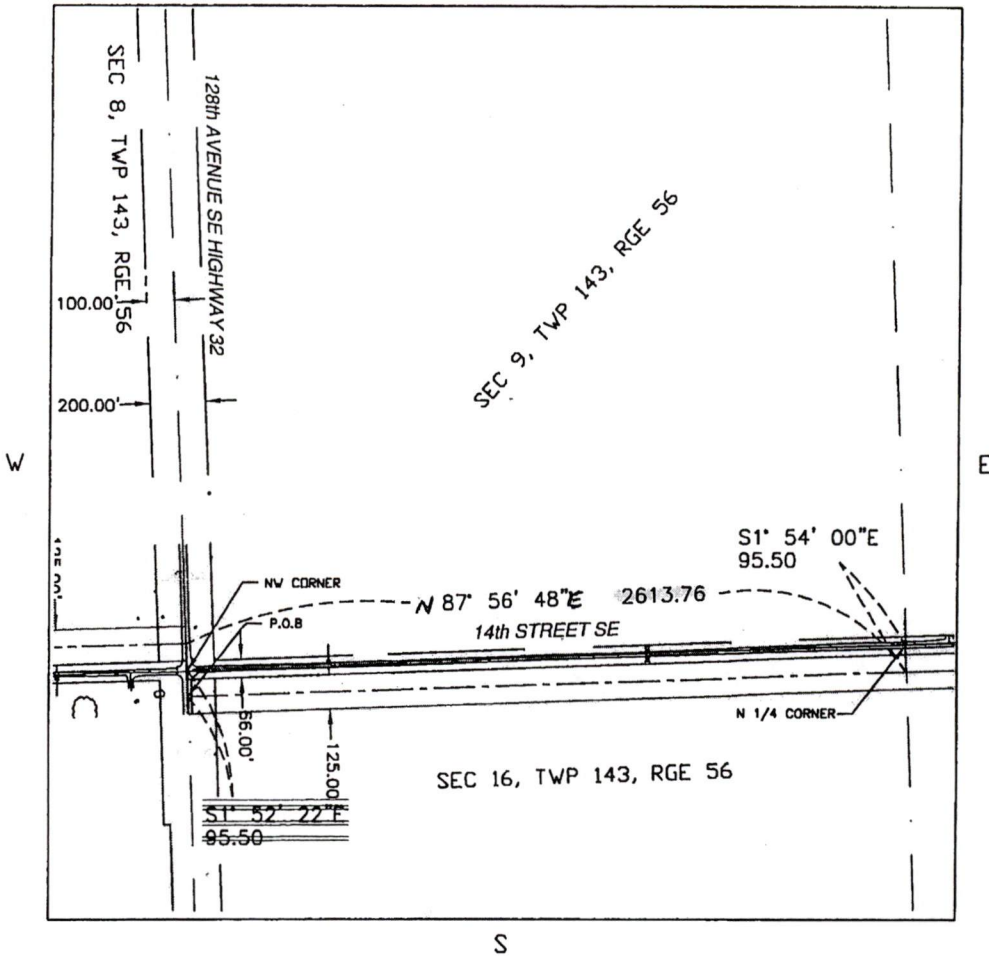
DWG. NO. \_\_\_\_\_

PROJECT: PILLSBURY-FARGO GENERATION OUTLET

SCALE: Section 1" = 500'

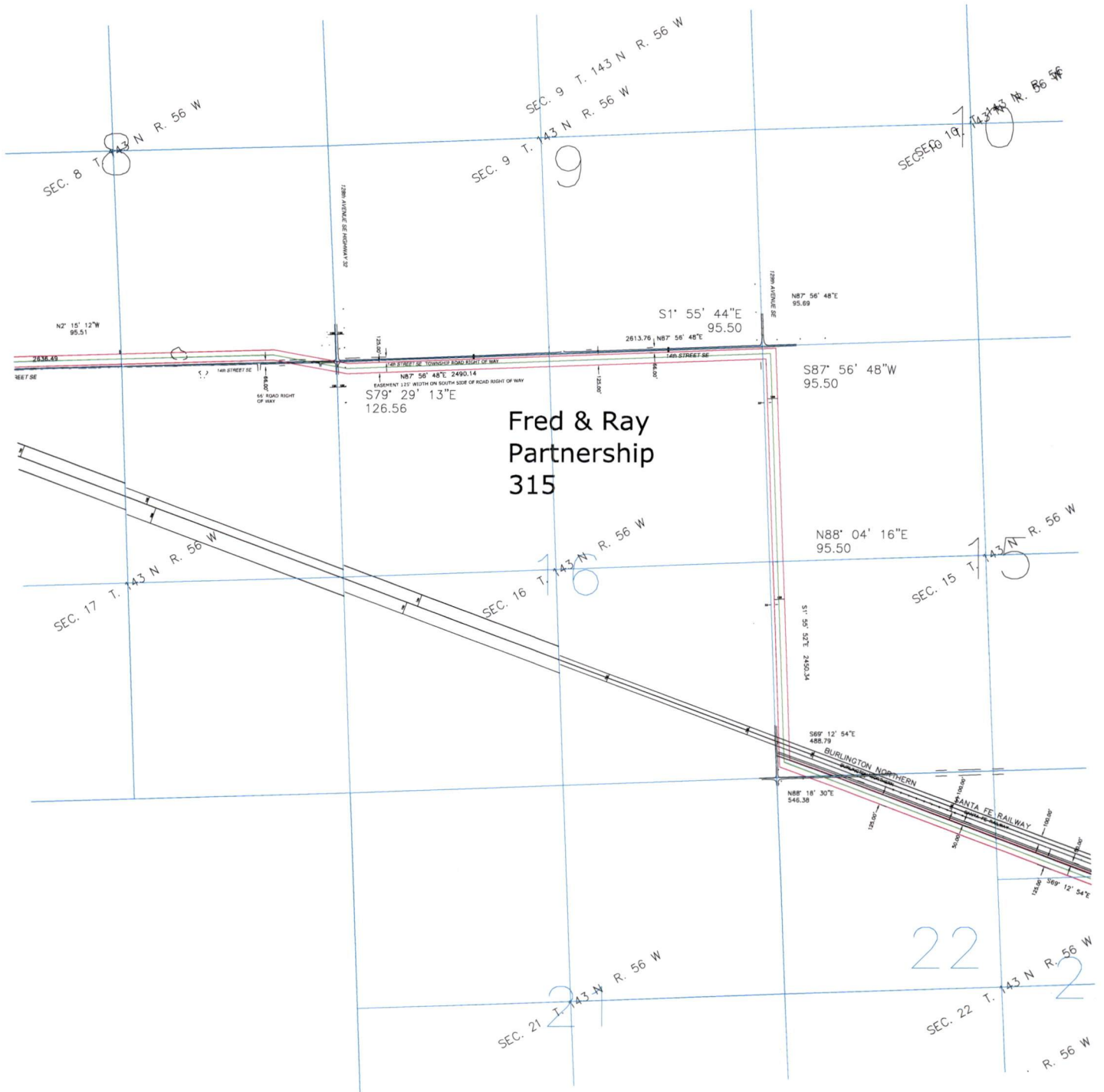


SHEET NO. \_\_\_\_\_ OF \_\_\_\_\_



DESCRIPTION NW 1/4 SEC. 16 TWP. 143N R. 56W  
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 OWNER FRED & RAY LLP ADDRESS \_\_\_\_\_  
 TRANSMISSION FACILITY: PILLSBURY-FARGO 230 KV GENERATION OUTLET  
 W. O. NO. \_\_\_\_\_ DATE \_\_\_\_\_ SIGNED \_\_\_\_\_




DWG. NO. \_\_\_\_\_  
 PROJECT: PILLSBURY-FARGO GENERATION OUTLET



# Ellsbury Township

T-143-N

R-56-W

LEGEND	
	Section Lines
	Easement Route
	Centerline of Easment



William W. Binek  
Special Assistant Attorney General  
Public Service Commission  
State Capitol  
Bismarck, ND 58505-0480  
*Counsel for The Public Service Commission of North Dakota*

Hand-Delivered

Public Service Commission  
State Capitol Building  
600 E. Boulevard Avenue; Dept. 408  
Bismarck, ND 58505-0480

Hand-Delivered

Allen C. Hoberg  
Administrative Law Judge  
1707 North 9<sup>th</sup> Street  
Bismarck, ND 58501-1882

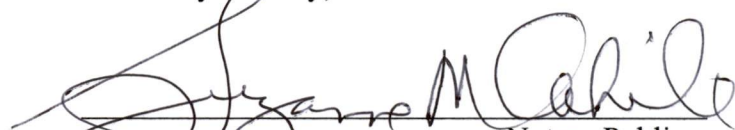
Hand-Delivered

To the best of affiant's knowledge, information and belief, such address as given above was the actual post office address of the party intended to be so served.

That the above document was duly served in accordance with the provisions of the North Dakota Rules of Civil Procedure.

  
Bethany Schmidt

Subscribed and sworn to before me this 8th day of May, 2008.

  
Notary Public

SUZANNE M CAHILL  
Notary Public  
State of North Dakota  
My Commission Expires Jan 29, 2011