
EASEMENT ENCROACHMENT AND CONSENT AGREEMENT

THIS EASEMENT ENCROACHMENT AND CONSENT AGREEMENT (“**Agreement**”) is made this 20th day of April, 2016 by and between Oliver Wind III, LLC, a Delaware limited liability company with its principal place of business at 700 Universe Boulevard, LAW/JB, Juno Beach, FL 33408 (the “**Crossing Party**”) and Montana-Dakota Utilities Co., a division of MDU Resources Group, Inc. and its successors and assigns with its principal place of business at 400 N. Fourth Street, Bismarck, ND 58501 (“**MDU**”). Crossing Party and MDU are collectively referred to herein as the “**Parties**”.

WHEREAS, MDU is the holder of an easement located in Oliver County, North Dakota and described in **Exhibit A** which is attached hereto and incorporated herein, for purposes of constructing, operating, and maintaining electrical transmission lines and related improvements (the “**Easement**”). The real property encumbered by the Easement shall be the “**Easement Area**” for purposes of this Agreement.

WHEREAS, Crossing Party is constructing overhead electrical utility lines for the purpose of transmitting electrical energy in Oliver County, North Dakota (the “**Transmission Line**”). Crossing Party’s proposed Transmission Line is proposed to cross MDU’s Easement Area in the location depicted on the attached **Exhibit B** which is attached hereto and incorporated herein (the “**Line Crossing**”).

WHEREAS, the Parties desire to permit the construction of the Line Crossing within the Easement Area pursuant to the terms and conditions contained herein:

NOW THEREFORE, for good and valuable consideration, the Parties agree as follows:

1. **Construction within Easement Area.** To the extent that MDU has the right to do so, MDU hereby grants to Crossing Party its consent to construct, operate, and maintain the Line Crossing, which Crossing Party shall construct and maintain in strict compliance with the plans and specifications provided on **Exhibit B**. Crossing Party shall not construct any improvements related to the Line Crossing except to the extent specifically described on **Exhibit B**.
2. **Location of Line Crossing.** The Line Crossing shall be located upon the Easement Area only as described and shown on **Exhibit B**. Crossing Party may not relocate or otherwise

alter the Line Crossing without the prior written consent of MDU. MDU shall be permitted to remove any of the Line Crossing to construct, maintain, operate, repair, remove, or replace MDU's transmission line and related improvements in the Easement Area, provided MDU shall pay for the cost of removing, replacing, and reinstalling the Line Crossing. MDU shall not be obligated to pay for the costs of modifying the Line Crossing to the extent required for code clearance compliance or capacity increases as contemplated in this Agreement.

3. **Restrictions of Use.** Crossing Party shall only utilize as much of the Easement Area as described and permitted on the attached **Exhibit B**. Crossing Party shall at all times conduct all activities related to the Line Crossing in such a manner as not to interfere with or impede the operation and maintenance of MDU's improvements in the Easement Area. The Crossing Party shall, at its own cost and expense, comply with all applicable laws, including but not limited to existing zoning ordinances, governmental rules and regulations enacted or promulgated by any governmental authority and shall promptly execute and fulfill all orders and requirements imposed by such governmental authorities for the correction, prevention, and abatement of nuisances in or upon or connected with the Transmission Line.
4. **Code Clearance Compliance.** Crossing Party shall ensure the Line Crossing complies with the National Electrical Safety Code ("NESC") Safety Rules for Overhead Lines and the required clearances between overhead conductors at all times. If NESC clearance requirements change, Crossing Party shall promptly make and incur all costs associated with the modifications required to keep the Line Crossing in compliance with then current NESC requirements.
5. **Capacity.** In the event MDU elects, or is otherwise required, to increase the capacity of its transmission line in the Easement, Crossing Party shall raise or otherwise modify the Line Crossing, at its sole cost and expense, to the extent reasonably necessary to accommodate MDU's capacity increase.
6. **Landowner Rights.** Crossing Party shall obtain, at its sole cost and expense, any and all real property rights, including easements or other right of way, as necessary for the Crossing Party's construction and operation of the Transmission Line and Line Crossing.
7. **Maintenance of Line Crossing.** Crossing Party shall, at Crossing Party's sole expense, be responsible for the costs of construction, maintenance, and removal of any and all improvements constructed by Crossing Party, or a successor or assign, within the Easement Area.
8. **Indemnity.** Crossing Party assumes all risks for damages, injuries, or loss to either property or persons caused by, or arising out of, or resulting from the installation, construction, use, maintenance, repair, or replacement of the Line Crossing. Crossing Party agrees to indemnify, defend, and hold harmless MDU, its affiliates, subsidiaries, and their directors, officers, employees, representatives, and agents (the "**MDU Indemnitee**") from and against any and all actions, claims, demands, liabilities, losses, damages, injuries, suits, proceedings,

judgments, costs, or expenses (collectively “**Claims**”) of whatever kind or nature, including but not limited to reasonable attorney fees arising out of, or in any way resulting from Crossing Party’s installation, construction, use, maintenance, repair, or replacement of the Transmission Line and the Line Crossing. Crossing Party shall not hold harmless the MDU Indemnatee for Claims arising out of the intentional acts or gross negligence of MDU.

9. **No Waiver.** This Agreement in no way constitutes a waiver by MDU of its rights to enjoy the Easement unencumbered by the construction, operation, maintenance or use of the Line Crossing in the Easement Area.
10. **Default.** If Crossing Party is in violation of any term or condition in this Agreement, MDU shall have all rights and remedies available at law or in equity.
11. **Successors and Assigns.** This Agreement shall run with the land, inure to the benefit of and be binding on the respective heirs, successors, and assigns of the Parties.
12. **Counterpart, Recording, and Choice of Law.** This Agreement may be executed simultaneously or in counterparts, each of which together shall constitute one and the same agreement. This Agreement may be recorded in Oliver County, North Dakota by either party. This Agreement shall constitute the entire agreement between the Parties and supersedes all other prior writings and understandings with respect to the subject matter described herein. This Agreement shall not be amended or modified in any way except by an instrument signed by both Parties. This Agreement shall be governed by the laws of the State of North Dakota and Oliver County, North Dakota shall be considered the proper venue for any disputes arising in connection with this Agreement.

[SIGNATURES TO FOLLOW]

EXHIBIT A

Description of the MDU Easement

Right of Way Easement between Ralph A. Barger and Teresa Berger and Dakotas Electric Cooperative, Inc., a North Dakota corporation dated July 25, 1949 and recorded August 3, 1949 as Document No. 43123 in Oliver County, North Dakota and Assignment of Easements dated July 13, 1965 and recorded July 23, 1965 as Document No. 51871 in Oliver County, North Dakota from Dakota Electric Cooperative, Inc. a North Dakota corporation to Montana-Dakota Utilities Co., a Delaware corporation.

EXHIBIT B

Depiction of Line Crossing

Overhead Crossing (1 crossing)

Crossing Lat Long Coordinates : 46°59'19.71"N 101° 8'45.93"W

East of 30th Street Voltage – 230kV

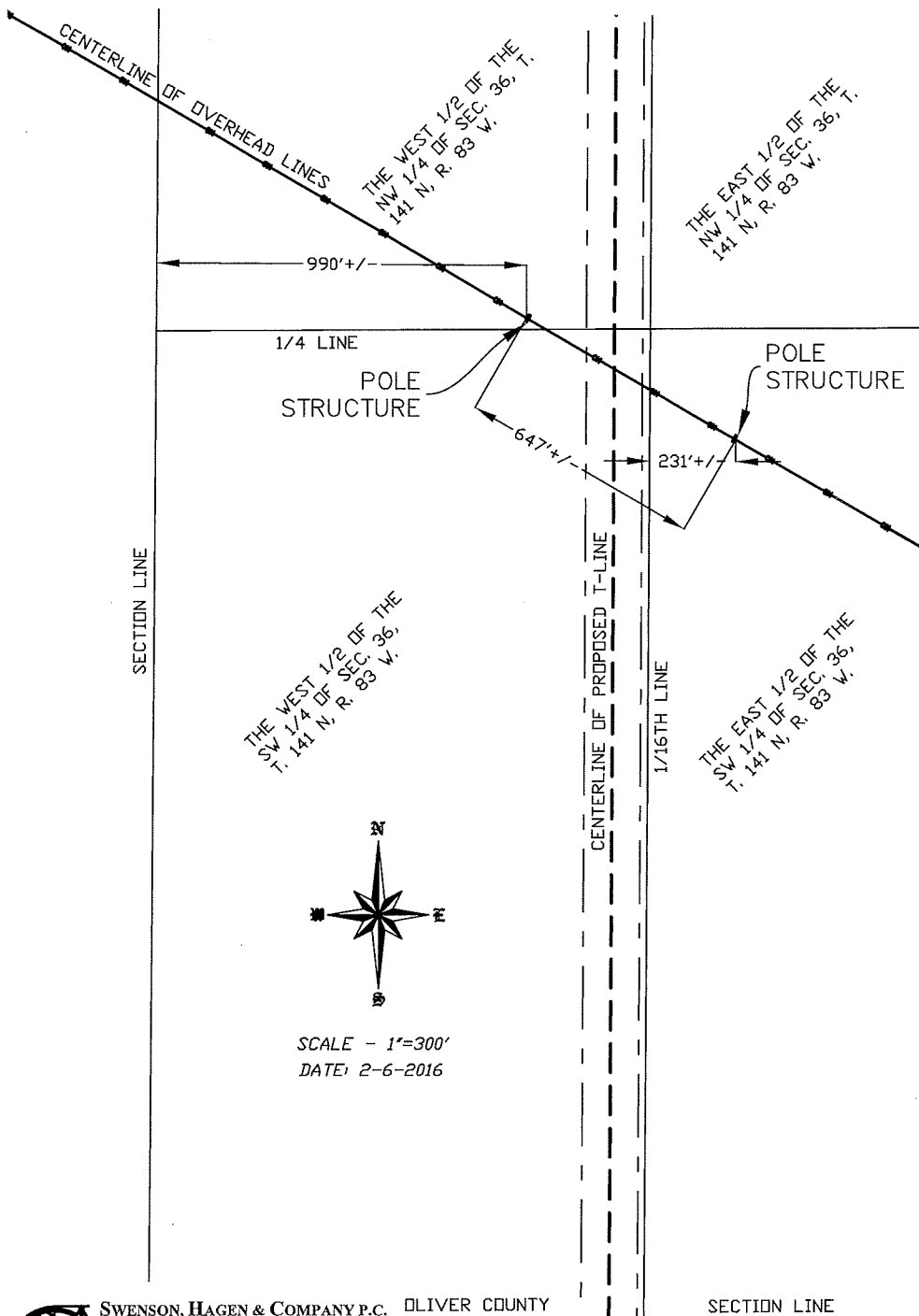
Oliver III Preliminary Crossing

Oliver County, ND

PART OF THE SW 1/4
SECTION 36, T.141N., R.83W.

PRIVILEGED AND CONFIDENTIAL

Attorney-Client Communication/Attorney Work Product
Prepared at the Direction of Legal Counsel



SCALE - 1"=300'
DATE: 2-6-2016



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OLIVER COUNTY
MORTON COUNTY

SECTION LINE