

RECEIVED

APR 22 2020

Public Service Commission

April 19, 2020

Brian Kroshus Julie Fedorchek Nancy Christmann

NORTH DAKOTA
PUBLIC SERVICE COMMISSION

There are three Burke County Commissioners,
One of which becomes the Chairman of the Burke
County Planning and Zoning commission.

One county commissioner's father-in-law, as
well as aunts and uncles-in-law have towers
on their land in the Northern Divide Wind
project. He voted in favor of the wind farm.

A second county commissioner signed a
'Memorandum of Option and Easements'
with the Burke Wind, L.L.C. on the first
proposed wind farm. I believe that agreement
has been dropped now, however, he was
also in favor of the wind farm.

The third voted in favor just to follow along.

If you have questions or would like to speak
with me, my contact information is below.

Arlo Griesbach
(701) 705-5790

PO Box 96
Powers Lake ND 58773-0096

64
PU-19-377 Filed 04/22/2020
Post-hearing Comments
Arlo Griesbach
Pages: 17
67
PU-19-376 Filed 04/22/2020
Post-hearing Comments
Arlo Griesbach
Pages: 17



AFTER RECORDING RETURN TO

Dru Roscoe, Esq.
NextEra Energy Resources, LLC
700 Universe Blvd., LAW/JB
Juno Beach, FL 33408

(This space reserved for recording information)

MEMORANDUM OF OPTION AND EASEMENTS

Richard L. Owings and Linda M. Owings, a/k/a Linda Owings, husband and wife ("**Owner**") and Burke Wind, LLC, a Delaware limited liability company ("**Operator**") have entered into that certain Wind Farm Easement Agreement ("**Agreement**") as of the mutual execution date of this Memorandum, whereby Owner granted to Operator an exclusive option ("**Option**") to acquire the following easements in connection with the development, construction and operation of a wind energy project in Burke County, North Dakota (jointly and severally, the "**Easements**"):

- (1) Construction Easement
- (2) Turbine Easement
- (3) Access Easement
- (4) Collection Easement
- (5) Telecommunication Easement
- (6) Wind Non-Obstruction Easement
- (7) Overhang Easement
- (8) Met Instrument Easement
- (9) Effects Easement

encumbering all or portions of the real property described in **Exhibit A** attached hereto and made a part hereof (the "**Owner's Property**").

As to the Option, the period during which the Option may be exercised ("**Initial Option Term**") shall begin on the date when both Owner and Operator have executed the Agreement, and shall continue for a period of thirty-six (36) months after such date. The Initial Option Term may be extended for one twenty-four (24) month extension period ("**Extended Option Term**"). References herein to the Option Term shall mean the Initial Option Term and, to the extent exercised by Operator, also the Extended Option Term. Operator may exercise the Option by giving written notice to Owner ("**Option Notice**") at any time during the Option Term.



(This space reserved for recording information)

As to the Easements:

(I) The term of the Easements is ninety-nine (99) years commencing on the date specified in Option Notice ("**Commencement Date**").

(II) Pursuant to the terms and conditions of the Agreement, Operator has the exclusive right to convert all of the wind resources on the Owner's Property. Any of the Owner's activities, or any grant of rights by Owner to a third party, on the Owner's Property or adjacent property of Owner shall not, now or in the future, interfere in any way with the rights of Operator under the Agreement.

(III) The Easements and any restriction contained in the Agreement run with the land affected thereby and are binding upon, and inure to the benefit of the Owner and Operator, their respective successors, heirs mortgagees, assigns, personal representatives, tenants, or persons claiming through them.

(IV) The address of Owner is:

Richard L. Owings and Linda M. Owings
9321 84th Avenue NW
Lignite, ND 58752

(V) The address of Operator is:

Burke Wind, LLC
700 Universe Boulevard
Juno Beach, FL 33408-2683
Attn: Land Services

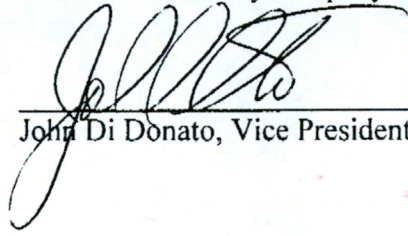


(This space reserved for recording information)

IN WITNESS WHEREOF, the Operator has executed this Memorandum of Option and Easements on the date set forth below:

Operator:

Burke Wind, LLC,
a Delaware limited liability company

By: 
John Di Donato, Vice President

STATE OF FLORIDA)
) SS.
COUNTY OF PALM BEACH)

The forgoing instrument was acknowledged before me this 12 day of June, 2017, by John Di Donato, as Vice President of Burke Wind, LLC, a Delaware limited liability company, who is personally known to me who subscribed to the foregoing instrument and acknowledged that he executed the same on behalf of said limited liability company and that he was duly authorized to do so.

(SEAL)

Name: _____
Notary Public, State of Florida
My Commission Expires: _____





(This space reserved for recording information)

EXHIBIT A

Legal Description of Owner's Property

Parcel 1:

The Southeast Quarter (SE $\frac{1}{4}$) and the Southeast Quarter of the Southwest Quarter (SE $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 13, Township 161 North, Range 92 West of the 5th P.M., Burke County, North Dakota.

Parcel 2:

Lots 3 and 4; the East Half of the Southwest Quarter (E $\frac{1}{2}$ SW $\frac{1}{4}$) and the West Half of the Southeast Quarter (W $\frac{1}{2}$ SE $\frac{1}{4}$); all in Section 18, Township 161 North, Range 91 West of the 5th P.M., Burke County, North Dakota.

Parcel 3:

The Northeast Quarter (NE $\frac{1}{4}$) of Section 24, Township 161 North, Range 92 West of the 5th P.M., Burke County, North Dakota.

7/19/2017

Burke County Recorder



263514

\$20.00

STATE OF NORTH DAKOTA BURKE COUNTY
I hereby certify that this instrument was filed for record
on 7/19/2017 @ 8:26 AM

Bonnie L. Bohnsack, County Recorder

By *Jacqueline A. Hessel*

263514

NEXTERA ENERGY RESOURCES. LLC

700 UNIVERSITY BLVD.

JUNO BEACH, FL 33408

Grant. Legal Relates _____ Satisfy _____ Verified _____

RECEIVED

APR 22 2020

April 19, 2020

Public Service Commission

Brian Kroshus Julie Fedorche Nancy Christmann

NORTH DAKOTA
PUBLIC SERVICE COMMISSION

The Burke County Planning and Zoning Commission consists of six appointed members.

One member's daughter married into a family that has towers in the Northern Divide Wind project. He voted in favor of the wind farm.

Another member that voted in favor had signed an 'Option and Transmission Easement' before he was appointed to the commission by the Chairman.

To me this is a conflict of interest and not impartial voting. Money talks.

Some townships in Burke County are forming their own zoning ordinances because of the biased decisions made.

If you have questions or would like to speak with me, my contact information is below.



Arlo Griesbach
(701) 705-5790

PO Box 96
Powers Lake ND 58773-0096



265326 \$65.00
STATE OF NORTH DAKOTA BURKE COUNTY
I hereby certify that this instrument was filed for record
on 1/26/2018 @ 1:05 PM
Bonnie L. Bohnsack, County Recorder

BY

Jacqueline A. Hovewal

OPTION AND TRANSMISSION EASEMENT

THIS OPTION AND TRANSMISSION EASEMENT ("**Agreement**"), is executed effective this 7th day of December, 2017 ("**Effective Date**"), by and between Embarc Farm, LLP, a limited liability company, whose address for notices is: P.O. Box 42, Powers Lake, ND 58773 ("**Grantor**") and Burke Wind, LLC, a Delaware limited liability company, whose address for notices is: 700 Universe Blvd., Attn: Land Services, Juno Beach, FL 33408 ("**Grantee**"). Grantor and Grantee are sometimes individually referred to as a "**Party**" and collectively, as the "**Parties**".

PREMISES

A. Grantor is the owner of a certain tract of real property located in Burke and Mountrail Counties, North Dakota and more particularly described on **Exhibit A** attached hereto and made a part hereof ("**Property**"); and

B. Grantor desires to grant and convey to Grantee an option to acquire an exclusive easement for the erection, installation and maintenance of certain facilities for the transmission of electric power over and across a certain portion of the Property.

IN CONSIDERATION of the foregoing and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto agree as follows:

1. **Option.** Grantor grants to Grantee an exclusive option to acquire the Easements referenced in Section 2 ("**Option**") in accordance with the following terms and conditions.

1.1. **Option Term.** The initial period during which Grantee may exercise the Option shall be for a term of thirty-six (36) months, commencing on the Effective Date and expiring on the date immediately preceding the third (3rd) anniversary of the Effective Date ("**Initial Option Term**"). Grantee shall have a single election to extend the Initial Option Term for an additional twenty-four (24) months ("**Extended Option Term**") by written notice to Grantor at any time prior to the third (3rd) anniversary of the Effective Date. References herein to the "**Option Term**" shall mean the Initial Option Term and, to the extent exercised by Grantee, also the Extended Option Term, unless expressly stated otherwise.



1.2 **Use.** During the Option Term, Grantee and its employees, agents and contractors shall have a right to enter upon the Property and the right of ingress and egress over and across the Property for the purposes of (i) surveying the Property; and (ii) performing such other tests and studies as Grantee may desire in connection with the Option, including, without limitation, environmental, avian and cultural resource assessments, and geotechnical, foundation and soil tests.

1.3 **Right to Grant Option.** Grantor warrants and represents to Grantee that (i) Grantor is the holder of fee simple title to all of the Property; (ii) Grantor has the authority to grant this Option and Agreement to Grantee without the consent or approval of any other party; and (iii) there are no other existing options, rights of first refusal, contracts to purchase, leases or mortgages that encumber the Property or would prevent Grantee from exercising its rights with respect to the Option except as disclosed in writing to Grantee.

1.4 **Exercise of Option.** Grantee may exercise the Option by giving written notice to Grantor ("**Option Notice**") at any time during the Option Term. Grantee shall specify in the Option Notice the commencement date ("**Commencement Date**"). On the Commencement Date, the Easements referenced in Section 2 shall automatically become effective, and the Parties shall be subject to all of the terms and conditions of this Agreement with respect to such Easements and all rights and obligations relating thereto. Along with the Option Notice, Grantee shall deliver to Grantor a proposed plan of development showing the contemplated location and route of the Easements referenced in Section 2, which shall serve as and be incorporated herein as the **Exhibit B** to this Agreement ("**Easement Area**"). If Grantee fails to exercise the Option within the Option Term, the Option and the rights of Grantee as the optionee shall automatically terminate.

2. **Grant.**

2.1 **Easements.** Upon the Commencement Date, Grantor does hereby grant, bargain, sell and convey unto Grantee, an exclusive easement under, on along and in the Easement Area for the purposes of erecting, constructing, replacing, relocating, improving, enlarging, removing, maintaining and utilizing, from time to time, a line or lines of towers and/or poles, with such wires and/or cables, for the transmission of electrical energy and telecommunication services, and all necessary and proper foundations, footings, cross arms and other appliances, facilities and fixtures for use in connection therewith (collectively, the "**Facilities**"); together with (i) an easement for vehicular and pedestrian ingress to and egress from the Facilities over and along the Property and Grantor's adjacent property by means of any existing roads or lanes thereon, or otherwise by such route or routes as Grantee or Grantor may construct from time to time; (ii) an exclusive easement for the right and privilege to permit the above ground Facilities to overhang the Property adjacent to the Easement Area; and (iii) a temporary easement ("**Construction Easement**") along and under that portion of the Property comprising the fifty (50) feet in width adjacent to and along the entire boundary of the Easement Area during, and for the purpose of, the initial construction and installation of the Facilities and storage of materials and equipment related thereto (collectively, "**Easements**"). The Easement Area shall not exceed one hundred fifty (150) feet in width except where appurtenances to the Facilities (e.g. supporting guy wires) are constructed, in which case the Easement Area may be

1/26/2018

Burke County Recorder



extended up to an additional seventy-five (75) feet. After completion of construction of the Facilities, Grantee, to the extent reasonably possible, shall restore the Construction Easement to the condition it was in prior to construction of the Facilities; provided, however, Grantee shall not be required to replant or restore any trees or other vegetation, which were removed from the Property pursuant to Section 3.

2.2 **Relocation.** During the final development and construction of the Facilities, Grantee may change the location and route of the Easements so long as the nature and extent of the relocated or rerouted Easements are not materially different and impose no greater burden on the Property than the original locations or routes. In the event Grantee does relocate the Easements under this Section, Grantee shall provide to Grantor a revised **Exhibit B**, which shall show the location of the Easements and shall substitute for the **Exhibit B**, delivered with the Option Notice. Grantee shall have the right to record in the County where the Property is located a notice incorporating the revised **Exhibit B**.

3. **Interference.** Grantor expressly reserves the right to use the Property for all other purposes not granted to Grantee under this Agreement; provided, however, Grantor covenants and agrees that neither Grantor nor its agents, lessees, invitees, guests, licensees, successors or assigns will (i) interfere with, impair or prohibit the free and complete use and enjoyment by Grantee of its rights granted by this Agreement; (ii) take any action which will in any way interfere with or impair the transmission of electric, electromagnetic or other forms of energy to or from the Easement Area; or (iii) take any action which will interfere with or impair Grantee's access over and across the Property and to the Easement Area for the purposes specified in this Agreement. Grantor shall not be permitted to drill or excavate for minerals on the surface of the Easements, but Grantor may extract oil, gas, or other minerals from and under the Easements by directional drilling or other means which do not interfere with or disturb Grantee's use of the Easements. Grantor shall not construct or place any buildings, structures, plants, or other obstructions on the Property which would result in the violation of the minimum clearance requirements of the National Electric Safety Code or would interfere with the operation and maintenance of the Facilities. Grantor shall not excavate so near the sides of or underneath the Facilities installed as to undermine or otherwise adversely affect their stability and usability. Grantee shall also have the right and privilege to trim, cut down, or control the growth of trees or any other vegetation on the Property, as in the sole judgment of Grantee may interfere with maintenance or operation of the Facilities. Grantor will cooperate with Operator to avoid pasturing animals on or near the Facilities during periods of construction, maintenance or removal activity by Operator.

4. **Term and Termination.** The term of the Easements and the terms and conditions of this Agreement with respect to such Easements, and all rights and obligations relating thereto, is ninety-nine (99) years commencing on the Commencement Date ("**Term**"), unless terminated as provided in this Agreement. Grantee shall have the right to terminate this Agreement as to all or any part of the Easement Area, at any time, effective upon thirty (30) days' written notice to Grantor.

5. **Removal.** If this Agreement is terminated by Grantee, and after receiving a written request from Grantor, Grantee shall remove all Facilities on the Property and restore the

Property to its approximate original condition that existed before Grantee constructed its Facilities, all at Grantee's sole cost and expense. Such removal by Grantee shall be accomplished within one (1) year after receiving a written request from Grantor and include any Facilities to a depth of forty-eight inches (48") beneath the surface of the Property.

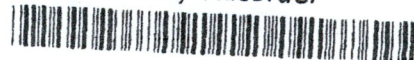
6. **Indemnification and Insurance.** Grantee shall maintain liability insurance insuring the Parties against loss caused by Grantee's use of the Property. The amount of insurance shall be not less than \$3,000,000.00 of combined single limit liability coverage. Grantee shall indemnify and at its expense defend Grantor against liability for injuries and claims for direct damage to the extent that they are caused by Grantee's exercise of rights granted in this Agreement. This indemnity does not cover losses of rent, business opportunities, crop production, and profits that may result from Grantor's loss of use of the Property.

7. **Assignment; Mortgage Rights.**

(a) Grantee, without Grantor's consent or approval, shall have the right to mortgage, collaterally assign, or otherwise encumber and grant security interests in all or any part of its interest in this Agreement, the Easements, the Easement Area, or the Facilities (collectively, its "Facilities Assets"). These various security interests in all or a part of the Facilities Assets are collectively referred to as "Mortgage" and the holders of the Mortgages, their designees and assigns are referred to as "Mortgagee". Grantee shall also have the right without Grantor's consent to sell, convey, lease, or assign all or any portion of its Facilities Assets on either an exclusive or a non-exclusive basis, or to grant sub-easements co-easements, separate easements, leases, licenses or similar rights, however denominated (collectively, "Assignment"), to one or more persons or entities (collectively, "Assignee"). Grantee's notice to Grantor shall include the name and address of each Mortgagee and/or Assignee.

(b) Assignees and Mortgagees shall use the Facilities Assets only for the uses permitted under this Agreement. As a precondition to exercising any rights or remedies related to any alleged default by Grantee under this Agreement, Grantor shall give written notice of the default to each Mortgagee at the same time it delivers notice of default to Grantee, specifying in detail the alleged event of default and the required remedy. To the extent permitted by the Mortgage at issue, any Mortgagee shall be permitted to exercise or perform any and all of Grantee's rights and obligations hereunder and Grantor shall accept such exercise and performance thereby. Any Mortgagee under any Mortgage shall be entitled to assign its interest or enforce its rights thereunder, as permitted by applicable law, without notice to or approval of Grantor.

8. **Setback Waiver.** Grantor hereby waives any and all benefits of North Dakota Century Code Section 49-22-05.1 and North Dakota Administrative Code Section 69-06-08-02, and all amendments thereto or replacements thereof, which provide, in part, that energy conversion facilities and transmission facilities located within 500 feet of a residence or place of business must be designated as an avoidance area; and agrees that such facilities may be constructed at the location as depicted on a map provided to Grantor, which facilities may be less than 500 feet from Grantor's residence or place of business.



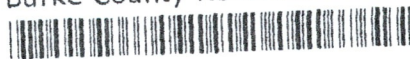
9. **Binding Effect; Governing Law.** This Agreement shall be binding upon and shall inure to the benefit of both Parties, and their respective heirs, successors and assigns, and shall be deemed a covenant running with the land for all purposes. The provisions hereof shall be governed by and construed in accordance with the laws of the State of North Dakota.

10. **Construction Liens.** Grantee shall not permit any liens arising out of Grantee's use of the Property under this Agreement to be filed against the Property. Grantee shall, within sixty (60) days after it receives notice of the lien, provide a bond or other security that Grantor may reasonably request, or remove such lien from the Property in the manner provided by applicable law.

[Signatures on Following Pages]

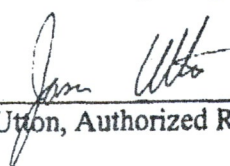
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1/26/2018
Burke County Recorder





Grantee:


Burke Wind, LLC
a Delaware limited liability company

By: 
Jason Utton, Authorized Representative

ACKNOWLEDGEMENT

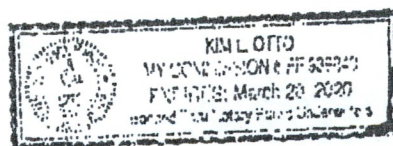
STATE OF FLORIDA)
) SS:
COUNTY OF PALM BEACH)

This instrument was acknowledged before me this 7 day of December, 2017,
by Jason Utton, as Authorized Representative of Burke Wind, LLC, a Delaware limited liability
company.


Notary Public, Commission No. _____

My Commission Expires:

(SEAL)



AFTER RECORDING RETURN TO

Dru Roscoe, Esq.
NextEra Energy Resources, LLC
700 Universe Blvd., LAW/JB
Juno Beach, FL 33408

EXHIBIT A

Legal Description of Property

Parcel 1:

Northeast Quarter (NE $\frac{1}{4}$) of Section 9, Township 158 North, Range 93 West of the 5th P.M., Mountrail County, North Dakota.

Parcel 2:

Northwest Quarter (NW $\frac{1}{4}$) of Section 34, Township 159 North, 93 West of the 5th P.M., Burke County, North Dakota.

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1/26/2018
Burke County Recorder



HOLDING PAGE FOR EXHIBIT B

Depiction of Easement Area

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1/26/2018
Burke County Recorder



265326
NEXTERA ENERGY RESOURCES, LLC
700 UNIVERSITY BLVD.
JUNO BEACH, FL 33408

Grant... Legal... Relates... Satisfy... Verified...