

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

**KEITH AND DEANNA KESSLER
V.
MINNESOTA POWER, A DIVISION OF ALLETE, INC.**

CASE NO. PU-20-194

**PRE-FILED TESTIMONY OF SCOTT MONROE
ON BEHALF OF MINNESOTA POWER**

March 8, 2021

1 **I. INTRODUCTION AND QUALIFICATIONS**

2

3 **Q. Please state your name, employer, and business address.**

4 A. My name is Scott Monroe. I am a Construction Manager for ALLETE Clean Energy
5 and a North Dakota Property and Right-of-Way Agent for ALLETE Renewable
6 Resources, Inc., and both entities are subsidiaries of ALLETE, Inc. My business
7 address is 1101 North 8th Street, New Salem, North Dakota 58563.

8

9 **Q. Briefly describe your work history and education.**

10 A. I have been with ALLETE, Inc. entities since January 2012 and, as noted above, I
11 currently have a dual role. Right now, most of my work is as a Construction
12 Manager for ALLETE Clean Energy, where I oversee the engineering, procurement,
13 and construction (“EPC”) contractor for a wind project currently under construction.
14 My role involves inspecting site preparation, construction, and restoration activities;
15 interacting with landowners regarding wind facility changes and landowner concerns;
16 and managing the project construction schedule. In addition, I am also a North
17 Dakota Property and Right-of-Way Agent for ALLETE Renewable Resources.
18 ALLETE Renewable Resources assists with development and operation of wind
19 facilities owned by Minnesota Power, a division of ALLETE, Inc. (“Minnesota
20 Power”).

21

22 My prior related experience includes working as a survey technician for Kadrmas
23 Lee & Jackson and as a land agent for Montana-Dakota Utilities in their Bismarck,
24 North Dakota offices. I have an Associate of Arts in Business from Bismarck State
25 College, Bismarck, North Dakota. A copy of my resume is provided as proposed **MP**
26 **Exhibit 4-1.**

27

28 **II. PURPOSE OF TESTIMONY**

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30 **Q. What is the purpose of your Direct Testimony?**

31 A. The purpose of my testimony is to discuss my role with respect to the Bison 4 Wind

32 Project ("Project") in light of the North Dakota Public Service Commission's ("PSC")
33 Notice of Hearing, including my interactions and alleged interactions with Keith and
34 Deanna Kessler ("Kesslers").
35

36 **Q. What proposed hearing exhibits are you sponsoring in your testimony?**

37 A. The following proposed hearing exhibits accompany my testimony:

- 38 • MP Exhibit 4-1: Monroe Resume
- 39 • MP Exhibit 4-2: Kessler Amended & Restated Wind Project Option
40 Agreement with Minnesota Power, dated May 8, 2013
- 41 • MP Exhibit 4-3: Kessler Wind Project Option Agreement with Minnesota
42 Power, dated July 17, 2013
- 43 • MP Exhibit 4-4: Kessler Memorandum of Easements (Option Agreement)
44 with Boulevard Associates, LLC, dated March 20, 2008
- 45 • MP Exhibit 4-5: Kessler Wind Project Easement Agreement with Minnesota
46 Power (N/2SE/4 of Section 15, SE/4 of Section 16), dated November 8, 2013
- 47 • MP Exhibit 4-6: Kessler Easement Agreement with Minnesota Power (E/2 of
48 Section 21), dated November 8, 2013
- 49 • MP Exhibit 4-7: Kessler Easement Agreement with Minnesota Power (SW/4
50 of Section 21), dated December 5, 2013

51

52 **III. INVOLVEMENT WITH BISON 4 PROJECT**

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54 **Q. What was your role with respect to the Project prior to its construction?**

55 A. My initial role with the Project was to acquire easement and option (as needed)
56 agreements for the Project. I was primarily responsible for working with landowners
57 located in North Dakota, while my supervisor, Wade Isaacson, was primarily
58 responsible for working with out-of-state landowners.

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60 **Q. Did you assist with the preparation of the Project's Certificate of Site
61 Compatibility ("CSC") Application submitted to the PSC?**

62 A. No.

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IV. KESSLER OPTION AND EASEMENT AGREEMENTS

Q. Did the Kesslers execute an option agreement with Minnesota Power related to the Project?

A. Yes. In 2009, prior to me joining Minnesota Power, the Kesslers executed an option agreement with Minnesota Power for land they owned in Mercer County, North Dakota. Later, in May 2013, the Kesslers' option agreement was amended to add land owned by the Kesslers in Oliver County, including in Section 15, Township 141 North, Range 87 West. A copy of the amended option agreement is attached as **MP Exhibit 4-2**. Also, the Kesslers signed a separate option agreement for land in Oliver County that the Kesslers had an interest in pursuant to a contract for deed with Mr. Kessler's parents. A copy of that option agreement is attached as **MP Exhibit 4-3**.

Q. Why wasn't the land in Oliver County included in the 2009 option agreement?

A. At the time the 2009 option agreement was signed, the Kesslers' Oliver County land was under option to another company, Boulevard Associates, LLC, per a Memorandum of Easements recorded in the Oliver County Recorder's Office as Document No. 84429. A copy of the Boulevard Associates, LLC option agreement is attached as **MP Exhibit 4-4**.

Q. Did the Kesslers execute easement agreements for the Project?

A. Yes. The Kesslers executed three easement agreements for the Project covering different sections of land that they owned. Copies of the executed easement agreements are attached as **MP Exhibit 4-5**, **MP Exhibit 4-6**, and **MP Exhibit 4-7**.

V. INTERACTIONS WITH KESSLERS

Q. Who was primarily responsible for securing easement agreements for the Project with the Kesslers?

94 A. I was primarily responsible for securing easement agreements with the Kesslers for
95 the Project.

96
97 **Q. Are you aware that the Kesslers allege in their written discovery responses as**
98 **follows: “When we were first discussing easements with the company Scott**
99 **Munrow (sic) came to our house to talk about easement and right-of-way, he**
100 **was the right-of-way person, and he told us specifically that we would have an**
101 **opportunity to make adjustments as to where the turbine was actually located,**
102 **and they would work with us on all issues, including writing (sic) roadways,**
103 **roads, infrastructure, everything. We specifically told him about the residence**
104 **and are (sic) concerned (sic) about that residence on section 15. We also told**
105 **him about our homeplace in Mercer County and we didn’t want any of the**
106 **turbines close to that residence either” (Kesslers’ Answers to Minnesota**
107 **Power’s First Set of Request for Admissions, Interrogatories, and Requests for**
108 **Production of Documents to Petitioners, Supp. Resp. to Request for**
109 **Admission No. 8).**

110 A. Yes, I am aware of those allegations.

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112 **Q. Have you ever been to the Kesslers’ home?**

113 A. No, I have not.

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115 **Q. Are you aware that the Kesslers allege in their Second Revised Complaint that**
116 **“the Kesslers raised the issue of the placement of Turbine 441 with Scott and**
117 **Matt” at the September 13, 2013 PSC public hearing, and that Matt “blew up”**
118 **at the Kesslers (Second Revised Complaint, ¶ 4(1))?**

119 A. Yes, I am aware of that allegation.

120
121 **Q. Did you attend the September 13, 2013 PSC public hearing on the CSC**
122 **Application?**

123 A. No.

124

125 **Q. Is your testimony that you could not have spoken with the Kesslers at the**
126 **September 13, 2013 PSC public hearing on the CSC Application because you**
127 **did not attend the hearing?**

128 A. Yes.

129

130 **Q. Prior to the PSC's issuance of an Order granting a Certificate of Site**
131 **Compatibility to the Project on September 25, 2013 ("Order"), did you speak**
132 **with the Kesslers?**

133 A. No, not that I recall.

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135 **Q. Prior to the PSC's issuance of the Order, were you aware of any planned use**
136 **by the Kesslers or their sons of the structure in Section 15, Township 141**
137 **North, Range 87 West, Oliver County, North Dakota ("Section 15 Structure") as**
138 **a residence?**

139 A. No.

140

141 **Q. Prior to the PSC's issuance of the Order, were you aware of any concerns the**
142 **Kesslers may have had regarding the placement of Turbine 441 in relation to**
143 **the Section 15 Structure?**

144 A. No.

145

146 **Q. Are you aware that the Kesslers allege in their answers to Minnesota Power's**
147 **discovery requests that you assured them "the towers in no way were going to**
148 **bother [the Kesslers'] land at all" (Kesslers' Answers to Minnesota Power's**
149 **First Set of Request for Admissions, Interrogatories, and Requests for**
150 **Production of Documents to Petitioners, Resp. to Interrogatory No. 12)??**

151 A. Yes, I am aware of that allegation.

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153 **Q. Did you at any time tell the Kesslers that the Project's towers would in no way**
154 **bother the Kesslers' land?**

155 A. No.

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Q. When did you first speak with the Kesslers?

A. Either Wade Isaacson or I sent the Kesslers a packet containing easement agreements for the Project, as well as color aerials showing the proposed Project infrastructure and easement areas. Those packets may have been sent out prior to the PSC public hearing. As I recall, I then called Mr. Kessler by telephone after the PSC issued a permit for the Project and set up a meeting in October 2013 at Minnesota Power's operations and maintenance building north of New Salem to have the Kesslers go over the easement agreements for the Project.

Q. When did you first learn the Kesslers had a concern regarding the placement of Turbine 441 in relation to the Section 15 Structure?

A. I first learned of a concern regarding the placement of Turbine 441 in relation to the Section 15 Structure in February 2017. On February 9, 2017, I received an email from Wade Isaacson asking whether there were any occupied dwellings in proximity to Turbine 441 when we sited and constructed the turbine. The email stated that Mr. Kessler had come to the office (in New Salem) that day, had said his son was living at a house in Section 15 about 1,000 feet from Turbine 441, and noted a noise concern.

Q. Did you have any discussions with the Kesslers regarding their concern?

A. Yes. In the spring of 2017, after the Kesslers raised concerns regarding Turbine 441 and reclamation issues with the PSC Staff, the PSC Staff asked Minnesota Power to meet with them and the Kesslers at the Kesslers' property to discuss the concerns. Wade Isaacson, Ben Reister (the Project site manager), and I met with John Schuh, Jerry Lein, and the Kesslers on April 14, 2017 at the Kesslers' property.

Q. Are you aware that, regarding the April 14, 2017 meeting, the Kesslers allege in their Second Revised Complaint as follows: "Then we went to section 15 and looked at 441 tower and discussed it being close to property line and the house. Deanna said we told you that it looked too close to the property line

187 and that one of our sons was going to live in the house. At that time Scott
188 Monroe agreed that we did tell him and Wade that” (Second Revised
189 Complaint, ¶ 8)?

190 A. Yes, I am aware of those allegations.

191

192 **Q. At the April 14, 2017 meeting, did you agree that the Kesslers had told you and**
193 **Wade that Turbine 441 looked too close to the property line and that one of the**
194 **Kesslers’ sons was going to live in the Section 15 Structure?**

195 A. No, I did not.

196

197 **VI. CONCLUSION**

198

199 **Q. Does this conclude your Direct Testimony?**

200 A. Yes.

201

Scott A. Monroe

214 West Divide Avenue, Bismarck, ND 58501 | (c) 701.214.7349 | smonroe@allete.com

Objective

To obtain employment with a company where I can use the abilities and skills that I have to make a positive difference.

Skills

- Experience with Microsoft programs such as: Word, Excel, and Outlook.
- Experience working with ArcGIS
- Conflict resolution
- Excellent people skills and customer relations.
- Basketball Coach/Official – 9 years
- Family Farming Business- 25 years

References

Available upon request.

Work History

Construction Manager

ALLETE Clean Energy

Aug 2018 - Current

New Salem, ND

- Responsible for overseeing the EPC Contractor during the construction of wind facilities
- Responsible for inspecting subgrade prep, Road, Rebar, foundations, erection, and overall completion.
- Interact with land owners to address any changes to wind facilities or concerns raised with land owners.
- Participate in daily and weekly meetings to address schedule.

Property & Right-of-Way Agent II

ALLETE Renewable Resources

Jan 2012 - Current

New Salem, ND

- Responsible for all right-of-way and land acquisitions for the installation of wind turbines, underground collection lines and access roads.
- Responsible for annual lease, right-of-way and damage payments.
- Conducted title research, deed plotting, and map checks.
- Monitored and renewed Option Agreements.
- Responsible for updating and maintaining ArcGIS application for the entire site.

Chemical Dependency Technician

Heartview Foundation

Feb 2011 – Dec 2011

Bismarck, ND

- Transported and supervised residents in the community
- Administered medications to residents
- Assisted residents with daily activities
- Charted and recorded residents daily

Sunroom Installer

ABC Seamless Inc.

Jan 2010 – Jan 2011

Bismarck, ND

- Knowledgeable in General Construction
- Installed Decks, doors, windows,
- Comfortable working from heights
- Competent reading constructions plans

Land Agent

Montana-Dakota Utilities

Mar 2008 – Mar 2009

Bismarck, ND

- Responsible for all right-of-way and land acquisitions for the installation of Gas and Electrical lines.
- Responsible for annual lease, right-of-way and damage payments.
- Conducted title research, deed plotting, and map checks.

Survey Technician

Kadmas Lee & Jackson

May 2003 – Mar 2008

Bismarck, ND

- Performed land surveys for Residential, Highway, and Railroad.
- GPS and Total Robotic Station experience.
- Very experienced in using survey equipment and reading plans.

Education**Associate of the Arts: Business**

Bismarck State College

Spring 2011

Bismarck, ND

High School Diploma

St. Mary's Central High School

Spring 2003

Bismarck, ND



88178 5/23/2013 9:43 AM PAGE: 1 OF 7
BOOK: II PAGE: 152 FEES: \$28.00 MM Amended & Restated Wind
Kim Wilkens, OLIVER COUNTY CLERK

By Kim Wilkens Esq Deputy

MINNESOTA POWER
30 W SUPERIOR ST
DULUTH, MN 55802



**AMENDED & RESTATED
WIND PROJECT OPTION AGREEMENT**

Special Message to Property Owners

This is an important agreement our lawyers have drafted that will bind you and your land for up to 56 years. We will give you enough time to study and thoroughly understand it. We strongly encourage you to hire a lawyer to explain this agreement to you. You may talk with your neighbors about the wind project and find out if they also received a proposed contract. You and your neighbors may choose to hire the same attorney to review the agreement and negotiate changes on your behalf.

SEQUENCE NO. 25932A

**AMENDED & RESTATED
WIND PROJECT OPTION AGREEMENT**

This Amended & Restated Wind Project Option Agreement ("Option") is made as of May 8, 2013, by and between **Keith G. Kessler and Deanna A. Kessler, husband and wife** ("Owner") as owner of the real property described on attached **Attachment 1** ("Owner's Property") and RendField Land Company, Inc., a Minnesota corporation ("Developer"). **This Amended & Restated Wind Project Option replaces the Wind Project Option Agreement recorded as Document No. 192255 in the office of the County Recorder's Office on July 13, 2009, Mercer County, North Dakota.**

1. Grant of Option. Owner hereby grants to Developer the exclusive and irrevocable option to acquire the exclusive right to convert all of the wind resources of the Owner's Property into energy, subject to and in accordance with the terms and conditions set forth in this Agreement.

2. Payment and Grant of "Most Favored Nation" Status. Developer shall pay to Owner the non-refundable sum of [REDACTED] (\$ [REDACTED] per acre) within 30 business days of the date hereof and on each anniversary hereof (the "Option Payment(s)"). If, within 8 months of the date hereof, Developer enters into an option agreement for wind development purposes (not including electric transmission purposes) with another landowner with similar property within a 10 mile radius of the Owner's Property, which such option agreement includes a higher Option Payment or higher Annual Installment Payments (as defined in the Wind Project Easement Agreement attached as **Attachment 2**), then this Amended & Restated Wind Project Option Agreement (and the Wind Project Easement Agreement, as applicable) will be amended to reflect such higher payments.

3. Option Term. The term of the Option shall be Five (5) years (the "Option Term"), unless earlier terminated by Developer. Developer may terminate this Option at any time upon thirty (30) days' written notice to Owner.

4. Exercise of Option. Developer may give written notice to Owner of the exercise of this Option during the Option Term, which such notice may exercise this Option as to all or only a part of Owner's Property. In the event of exercise of the Option by Developer, Developer and Owner agree to promptly execute a Wind Project Easement Agreement in the form of **Attachment 2**. If Developer exercises this Option as to only a part of the Owner's Property, this Option shall remain in effect as to the remainder of Owner's Property for the rest of the Option Term and Option Payments shall be adjusted proportionate to the acreage remaining under option.

5. Failure to Exercise Option or Make Option Payments. If Developer fails to give written notice of exercise of this Option on or before the Option Term expires, or if Developer fails to make any Option Payment when due, and such failure continues for fifteen (15) days after written notice thereof from Owner, this Option shall automatically terminate, Developer shall have no rights herein and Owner shall retain the Option Payment(s).

6. Developer Access and Met Tower Construction.

- (a) During the Option Term, Developer and Developer's agents and contractors shall be entitled to enter upon the Owner's Property to perform engineering surveys, soil tests, environmental tests, and such other inspections, tests and studies as Developer deems necessary, all at Developer's sole cost and expense.
- (b) During the Option Term, Developer and Developer's agents and contractors shall be entitled to enter upon Owner's Property to construct, erect, install, reinstall, replace, relocate and remove from time to time: meteorological and wind measuring equipment, including but not limited to anemometer towers and all necessary and proper appliances and fixtures for use in connection with said towers (collectively "Met Tower"), to determine the feasibility of wind energy conversion on the Property, on adjacent property or elsewhere.
- (c) Developer shall pay Owner a Met Tower Fee for each meteorological tower, if any, installed on the Owner's Property by Developer that operates during the Option Term in an amount equal to [REDACTED] (\$ [REDACTED]) per Met Tower per year.
- (d) Developer shall not construct roads, lanes or other surface improvements to access the Met Tower except with the express written consent of Owner, which consent will not be unreasonably withheld. If a road is not constructed, after each use of Owner's property to access the Met Tower, Developer to the extent reasonably possible, shall restore the Owner's Property to the condition that it was in before Developer's access.
- (e) Developer agrees to indemnify, defend and hold Owner harmless from any and all claims, of whatever nature, arising out of or relating to any act or omission of Developer or Developer's agents or contractors on the Owner's Property in the exercise of Developer's rights under this Option.
- (f) To the extent that any damage is caused to the Owner's Property by Developer, Developer shall, prior to expiration of the Option Term if this Option is not exercised, restore the Owner's Property to the condition as it exists as of the date hereof.
- (g) Developer shall pay Owner the fair market value for actual crop loss and damage resulting from Developer's exercise of its rights under this Option. Owner will provide Developer with an invoice for such crop loss and damage by November 15 of each year, based upon which Developer will make payment for crop loss and damage by December 15 of such year. Developer may use crop yield information from the records of the Federal Farm Insurance Corporation and value information from the Farm Services Agency or similar source of crop market value information for the period between April 1 and November 1 of that year to confirm fair market value and crop yields.

(h) Developer shall not permit any mechanic liens to be filed against the Owner's Property, and shall immediately discharge or obtain releases of any such mechanic liens. Developer shall not be liable for any existing conditions on the Owner's Property, provided the Owner's Property is restored to the condition as it exists on the date hereof.

7. Representations and Warranties By Owner. Owner represents and warrants to Developer that Owner is the sole owner of the Owner's Property and has the unrestricted right and authority to sign this Option and to grant Developer the rights granted herein. When signed by both parties, this Option constitutes a valid and binding agreement enforceable against Owner in accordance with its terms.

8. Notices. All notices or other communications required or permitted by this Option shall be in writing. Notices and payments shall be deemed given or made when personally delivered; five (5) days after deposit in the United States mail, first class, postage prepaid, certified; or, one (1) business day after dispatch by Federal Express or other overnight delivery service of national scope, addressed as follows:

If to Owner: **Keith G. and Deanna A. Kessler**
6001 26th Street S.W.
Glen Ullin, ND 58631

If to Developer: RendField Land Company, Inc.
30 W. Superior St.
Duluth, MN 55802
Attn: General Manager – Renewable Operations

Any party may change its address for purposes of this paragraph by giving written notice of the change to the other parties in the manner provided in this paragraph.

9. Entire Agreement. This Option and its Attachments constitute the entire agreement between the parties with respect to the subject matter hereof and thereof. This Option may not be changed orally, but only by an agreement signed by the parties.

10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of North Dakota, irrespective of the domicile of the parties.

11. Binding Effect. This Option shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

12. Time Is of the Essence. Time is of the essence in the performance of the terms and conditions of this Option.

13. Savings Clause. If any term or condition of this Option is held to be invalid or unenforceable, such term or condition shall not be enforced, but all other terms and conditions of this Option shall be deemed in full force and effect.

[Remainder of page intentionally blank]

IN WITNESS WHEREOF, the parties hereto have executed this Amended & Restated Wind Project Option Agreement effective the date set forth above:

OWNER:

DEVELOPER:

Keith G. Kessler
Keith G. Kessler

By: Deborah A. Amberg

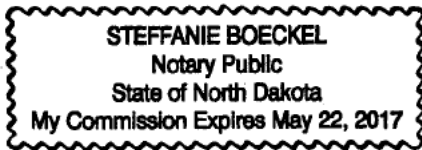
Deanna A. Kessler
Deanna A. Kessler

Its: VP, General Counsel & Secretary

STATE OF North Dakota)
COUNTY OF Mercer) SS.

The foregoing instrument was acknowledged before me this 26 day of April, 2013, by **Keith G. Kessler and Deanna A. Kessler, husband and wife.**

Notarial Stamp or Seal

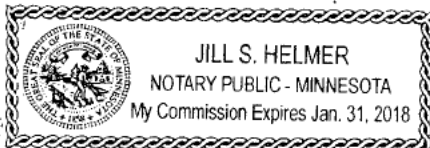


Steffanie Boeckel
Notary Public

STATE OF MINNESOTA)
COUNTY OF ST. LOUIS) SS.

The foregoing instrument was acknowledged before me this 8 day of May, 2013, by Deborah A. Amberg the VP General Counsel & Secretary of RendField Land Company, Inc., a Minnesota corporation, on behalf of the company

Notarial Stamp or Seal



Jill Helmer
Notary Public

ATTACHMENT 1

Legal Description of Owner's Property

NW¹/₄, N¹/₂SE¹/₄ and the SE¹/₄SE¹/₄ of Section 15

NE¹/₄ and the S¹/₂ of Section 16

Lots 1 and 2 and the E¹/₂NW¹/₄ of Section 18

T141N R87W, Oliver County, North Dakota, 5th Principal Meridian

and

SE¹/₄ of Section 1

E¹/₂E¹/₂ and the NW¹/₄SE¹/₄ of Section 12

T141N R88W, Mercer County, North Dakota, 5th Principal Meridian

MORTGAGEE
MORTGAGOR
INDEXED ✓

STATE OF NORTH DAKOTA
COUNTY OF MERCER

202080
OFFICE OF
COUNTY RECORDER

I hereby certify that the within instrument was filed in this office for record this 5/13/2013 at 9:57 AM, and was duly recorded as Book 194 MISC on Page 679 Fee: \$28.00

County Recorder *Brenda L. Cook*

By Deputy *Kathryn Schumann*

Return To: MINNESOTA POWER, 30 WEST SUPERIOR ST
DULUTH, MN 55802-2093





88321 7/22/2013 1:21 PM PAGE: 1 OF 8
BOOK: II PAGE: 320 FEES: \$31.00 MM WIND PROJECT OPTION
Kim Wilkens, OLIVER COUNTY CLERK

By Kim Wilkens, Deputy Clerk

MINNESOTA POWER
ATTN: JILL HELMER
30 WEST SUPERIOR STREET
DULUTH, MN 55802



WIND PROJECT OPTION AGREEMENT

Special Message to Property Owners

This is an important agreement our lawyers have drafted that will bind you and your land for up to 55 years. We will give you enough time to study and thoroughly understand it. We strongly encourage you to hire a lawyer to explain this agreement to you. You may talk with your neighbors about the wind project and find out if they also received a proposed contract. You and your neighbors may choose to hire the same attorney to review the agreement and negotiate changes on your behalf.

SEQUENCE NO. 27463

WIND PROJECT OPTION AGREEMENT

This Wind Project Option Agreement ("Option") is made as of July 17, 2013, by and between **Keith G. Kessler and Deanna A. Kessler, husband and wife** ("Buyers" under that certain Contract for Deed dated August 1, 2003) and **Calvin J. Kessler and Jeannette A. Kessler, husband and wife** ("Sellers" under that certain Contract for Deed dated August 1, 2003) ("Owner") as owner of the real property described on attached **Attachment 1** ("Owner's Property") and RendField Land Company, Inc., a Minnesota corporation ("Developer").

1. Grant of Option. Owner hereby grants to Developer the exclusive and irrevocable option to acquire the exclusive right to convert all of the wind resources of the Owner's Property into energy, subject to and in accordance with the terms and conditions set forth in this Agreement.

2. Payment and Grant of "Most Favored Nation" Status. Developer shall pay to **Keith G. Kessler and Deanna A. Kessler, husband and wife** the non-refundable sum of \$ [REDACTED] (\$ [REDACTED] per acre) within 30 business days of the date hereof and on each anniversary hereof (the "Option Payment(s)"). If, within 8 months of the date hereof, Developer enters into an option agreement for wind development purposes (not including electric transmission purposes) with another landowner with similar property within a 10 mile radius of the Owner's Property, which such option agreement includes a higher Option Payment or higher Annual Installment Payments (as defined in the Wind Project Easement Agreement attached as **Attachment 2**), then this Wind Project Option Agreement (and the Wind Project Easement Agreement, as applicable) will be amended to reflect such higher payments.

3. Option Term. The term of the Option shall be Five (5) years (the "Option Term"), unless earlier terminated by Developer. Developer may terminate this Option at any time upon thirty (30) days' written notice to Owner.

4. Exercise of Option. Developer may give written notice to Owner of the exercise of this Option during the Option Term, which such notice may exercise this Option as to all or only a part of Owner's Property. In the event of exercise of the Option by Developer, Developer and Owner agree to promptly execute a Wind Project Easement Agreement in the form of **Attachment 2**. If Developer exercises this Option as to only a part of the Owner's Property, this Option shall remain in effect as to the remainder of Owner's Property for the rest of the Option Term and Option Payments shall be adjusted proportionate to the acreage remaining under option.

5. Failure to Exercise Option or Make Option Payments. If Developer fails to give written notice of exercise of this Option on or before the Option Term expires, or if Developer fails to make any Option Payment when due, and such failure continues for fifteen (15) days after written notice thereof from Owner, this Option shall automatically terminate, Developer shall have no rights herein and Owner shall retain the Option Payment(s).

6. Developer Access and Met Tower Construction.

- (a) During the Option Term, Developer and Developer's agents and contractors shall be entitled to enter upon the Owner's Property to perform engineering surveys, soil tests, environmental tests, and such other inspections, tests and studies as Developer deems necessary, all at Developer's sole cost and expense.
- (b) During the Option Term, Developer and Developer's agents and contractors shall be entitled to enter upon Owner's Property to construct, erect, install, reinstall, replace, relocate and remove from time to time: meteorological and wind measuring equipment, including but not limited to anemometer towers and all necessary and proper appliances and fixtures for use in connection with said towers (collectively "Met Tower"), to determine the feasibility of wind energy conversion on the Property, on adjacent property or elsewhere.
- (c) Developer shall pay Owner a Met Tower Fee for each meteorological tower, if any, installed on the Owner's Property by Developer that operates during the Option Term in an amount equal to [REDACTED] (\$ [REDACTED]) per Met Tower per year.
- (d) Developer shall not construct roads, lanes or other surface improvements to access the Met Tower except with the express written consent of Owner, which consent will not be unreasonably withheld. If a road is not constructed, after each use of Owner's property to access the Met Tower, Developer to the extent reasonably possible, shall restore the Owner's Property to the condition that it was in before Developer's access.
- (e) Developer agrees to indemnify, defend and hold Owner harmless from any and all claims, of whatever nature, arising out of or relating to any act or omission of Developer or Developer's agents or contractors on the Owner's Property in the exercise of Developer's rights under this Option.
- (f) To the extent that any damage is caused to the Owner's Property by Developer, Developer shall, prior to expiration of the Option Term if this Option is not exercised, restore the Owner's Property to the condition as it exists as of the date hereof.
- (g) Developer shall pay Owner the fair market value for actual crop loss and damage resulting from Developer's exercise of its rights under this Option. Owner will provide Developer with an invoice for such crop loss and damage by November 15 of each year, based upon which Developer will make payment for crop loss and damage by December 15 of such year. Developer may use crop yield information from the records of the Federal Farm Insurance Corporation and value information from the Farm Services Agency or similar source of crop market value information for the period between April 1 and November 1 of that year to confirm fair market value and crop yields.

(h) Developer shall not permit any mechanic liens to be filed against the Owner's Property, and shall immediately discharge or obtain releases of any such mechanic liens. Developer shall not be liable for any existing conditions on the Owner's Property, provided the Owner's Property is restored to the condition as it exists on the date hereof.

7. Representations and Warranties By Owner. Owner represents and warrants to Developer that Owner is the sole owner of the Owner's Property and has the unrestricted right and authority to sign this Option and to grant Developer the rights granted herein. When signed by both parties, this Option constitutes a valid and binding agreement enforceable against Owner in accordance with its terms.

8. Notices. All notices or other communications required or permitted by this Option shall be in writing. Notices and payments shall be deemed given or made when personally delivered; five (5) days after deposit in the United States mail, first class, postage prepaid, certified; or, one (1) business day after dispatch by Federal Express or other overnight delivery service of national scope, addressed as follows:

If to Owner: **Keith G. and Deanna A. Kessler**
6001 26th Street S.W.
Glen Ullin, ND 58631

Calvin J. and Jeannette A. Kessler
108 Fourth Avenue S.W.
Beulah, ND 58523-6723

If to Developer: RendField Land Company, Inc.
30 W. Superior St.
Duluth, MN 55802
Attn: General Manager – Renewable Operations

Any party may change its address for purposes of this paragraph by giving written notice of the change to the other parties in the manner provided in this paragraph.

9. Entire Agreement. This Option and its Attachments constitute the entire agreement between the parties with respect to the subject matter hereof and thereof. This Option may not be changed orally, but only by an agreement signed by the parties.

10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of North Dakota, irrespective of the domicile of the parties.

11. Binding Effect. This Option shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

12. Time Is of the Essence. Time is of the essence in the performance of the terms and conditions of this Option.

13. Savings Clause. If any term or condition of this Option is held to be invalid or unenforceable, such term or condition shall not be enforced, but all other terms and conditions of this Option shall be deemed in full force and effect.

[Remainder of page intentionally blank]

ATTACHMENT 1

Legal Description of Owner's Property

*E½ of Section 21 T141N R87W
Oliver County, North Dakota, 5th Principal Meridian*

(This space reserved for recording information)

(B) The Easements shall be defined pursuant to an as built survey to be prepared by Operator upon completion of construction of the wind energy project which may be recorded in the public records by Operator.

(III) The Easements and any restriction contained in the Easement 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:

Keith G. and Deanna A. Kessler
6001 26th Street SW
Glen Ullin, ND 58631
701-873-5303

(V) The address of Operator is:

Boulevard Associates, LLC
700 Universe Boulevard
Juno Beach, FL 33408-2683
Telephone: (561) 691-7171
Telecopier: (561) 691-7177
Attn: Business Manager

(This space reserved for recording information)

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

Owner:

Keith G. Kessler a/k/a Keith Kessler
Keith G. Kessler a/k/a Keith Kessler

Deanna A. Kessler
Deanna A. Kessler

ACKNOWLEDGMENT

STATE OF NORTH DAKOTA

Mercer

COUNTY OF ~~MORTON~~

The forgoing instrument was acknowledged before me this 25 day of November, 2007, by Keith G. Kessler a/k/a Keith Kessler and Deanna A. Kessler.

My Commission expires: 4-12-11


Renee Erickson
Notary Public

RENEE ERICKSON
Notary Public
State of North Dakota
My Commission Expires Apr. 12, 2011

(This space reserved for recording information)

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

Operator:
Boulevard Associates, LLC,
a Delaware Limited Liability Company

By: 
Dean R. Gosselin, Vice President

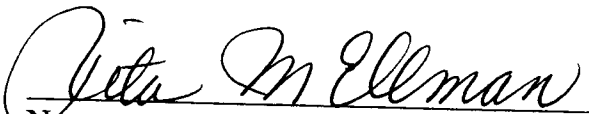
STATE OF FLORIDA)
) SS.
COUNTY OF PALM BEACH)

The forgoing instrument was acknowledged before me this 20th day of March, 2008, by Dean R. Gosselin, as Vice President of Boulevard Associates, 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)



Rita M. Ellman
Commission # DD415594
Expires June 17, 2009
Bonded Troy Fain - Insurance, Inc. 800-385-7019


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

(This space reserved for recording information)

EXHIBIT A

Legal Description of Easement Property

The Northwest Quarter (NW $\frac{1}{4}$) of Section 15, Township 141 North, Range 87 West of the 5th P.M., Oliver County, North Dakota ✓

The Southeast Quarter of the Southeast Quarter (SE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 15, Township 141 North, Range 87 West of the 5th P.M., Oliver County, North Dakota

The North Half of the Southeast Quarter (N $\frac{1}{2}$ SE $\frac{1}{4}$) of Section 15, Township 141 North, Range 87 West of the 5th P.M., Oliver County, North Dakota

Northeast Quarter (NE $\frac{1}{4}$) of Section 16, Township 141 North, Range 87 West of the 5th P.M., Oliver County, North Dakota ✓

South Half (S $\frac{1}{2}$) of Section 16, Township 141 North, Range 87 West, Oliver County, North Dakota ✓

Lots 1 and 2 and East Half of the Northwest Quarter (E $\frac{1}{2}$ NW $\frac{1}{4}$) of Section 18, Township 141 North, Range 87 West, Oliver County, North Dakota ✓

The East Half (E $\frac{1}{2}$) of Section 21, Township 141 North, Range 87 West, Oliver County, North Dakota ✓

↓

NONPUBLIC DATA HAS BEEN REMOVED



88638

11/12/2013 1:27 PM PAGE: 1 OF 6

BOOK: JJ PAGE: 227 FEES: \$35.00 MM MEMORANDUM OF EASE
Kim Wilkens, OLIVER COUNTY RECORDER

By *mmaulty-E. Deputy*

MINNESOTA POWER
ATTN: JILL HELMER
30 WEST SUPERIOR STREET
DULUTH, MN 55802



MEMORANDUM OF EASEMENTS

This Memorandum of Easements evidences a Wind Project Easement Agreement dated November 8, 2013 by and between **Keith G. Kessler and Deanna A. Kessler, husband and wife** (“Owner”), as owner(s) of the real property described on attached **Exhibit A** (“Owner’s Property”) and Minnesota Power a division of ALLETE, Inc., a Minnesota corporation (“Minnesota Power” or “Developer”) (the “Easement Agreement”). Capitalized terms used herein are given the same meaning as in the Easement Agreement.

The Easement Agreement provides, among other things, that for and in consideration of the payments therein provided for, and upon the terms, conditions, covenants, and provisions set forth at length therein, that Owner grants to Minnesota Power the following irrevocable and exclusive easements, covering all or portions of the Owner’s Property, in connection with the development, construction, and operation of a wind energy project (individually each an “Easement” and collectively the “Easements”):

1. Turbine Site Easement
2. Access Easement
3. Collection Easement
4. Construction Easement
5. Wind Non-Obstruction Easement
6. Noise Easement
7. Overhang Easement
8. Met Tower Site Easement
9. Met Tower Access Easement

Attached as **Exhibit B** is a preliminary Easement Plan showing the approximate planned location of all Wind Project Improvements and Easements located on the Owner's Property. Within 180 days after completion of construction, Developer will deliver a final as-built Easement Plan to Owner showing the exact locations of all Wind Project Improvements as constructed on Owner's Property and all Easements. Such as-built Easement Plan (Exhibit C) will replace the attached Exhibit B and Developer may record Exhibit C in the public records.

The Easements are granted subject to Owner's retained right to use the affected portions of the Owner's Property for agricultural purposes that do not interfere with the Easements or the other rights granted to Developer in the Easement Agreement.

The Easement Agreement also provides as follows:

"Owner grants Developer an irrevocable, exclusive easement for the right and privilege to use, maintain and capture the free and unobstructed flow of wind currents over and across the Owner's Property."

And

"Owner shall not engage in any activity on Owner's Property that might interfere with wind speed or wind direction over any portion of the Wind Project; cause a decrease in the output or efficiency of any Turbine or accuracy of any meteorological equipment; or otherwise interfere with Developer's operation of the Wind Project or exercise of any rights or the Easements granted in this Agreement"

Unless earlier terminated as provided therein, the Easement Agreement runs through November 30, 2064.

The Easements and any rights or obligations in the Easement Agreement run with the Owner's Property affected and are binding on, and inure to the benefit of, Owner and Developer and their respective mortgagees, successors and assigns, heirs, personal representatives, tenants, or persons claiming through them

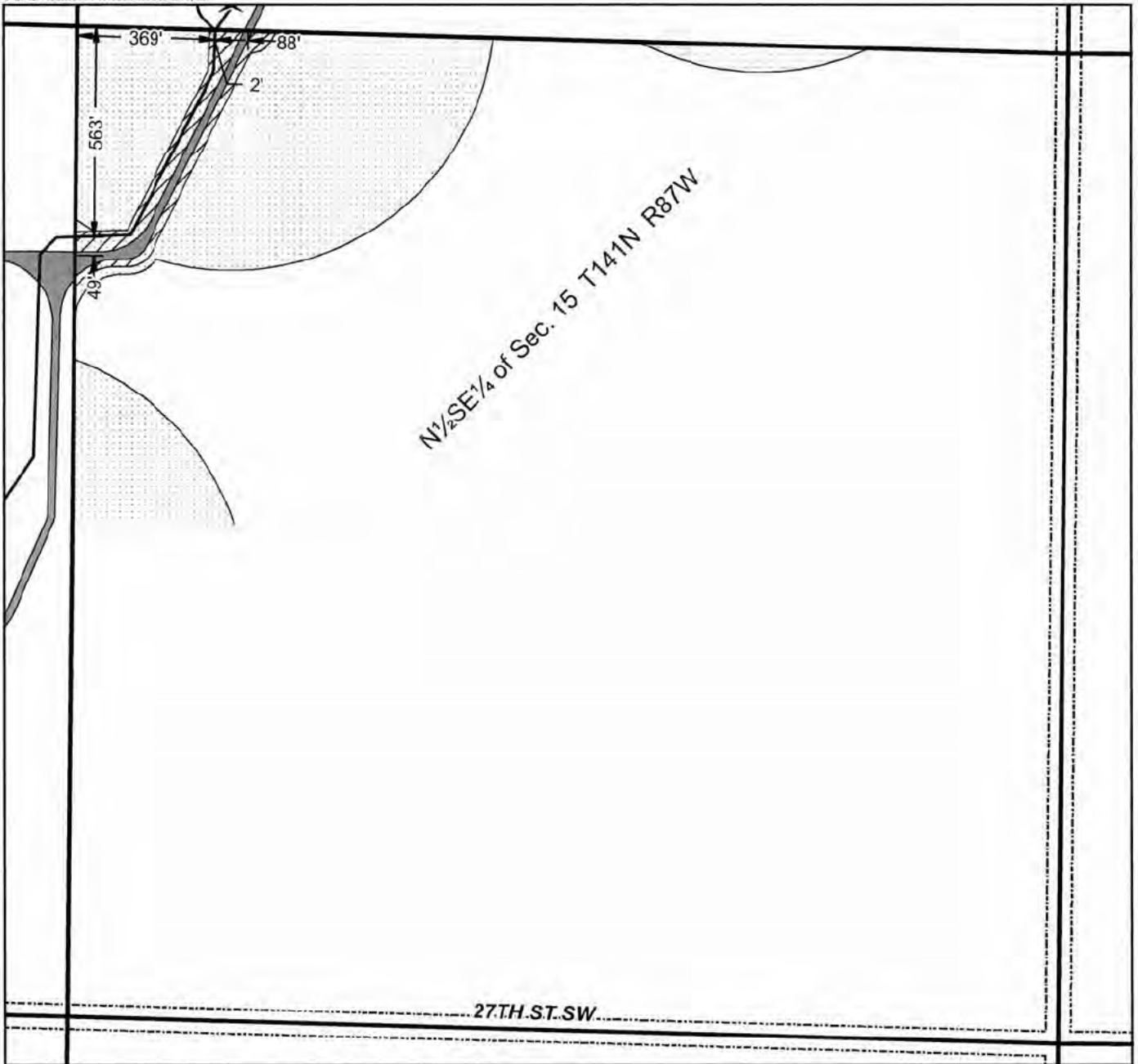
Reference is hereby made to the Easement Agreement as to all remaining terms thereof. This Memorandum of Easements is prepared, signed, and acknowledged solely for recording purposes and does not modify, increase, decrease, or in any other way affect the rights, duties, and obligations of Owner or Minnesota Power under the Easement Agreement.

EXHIBIT A

N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 15

SE $\frac{1}{4}$ of Section 16

In T141N R87W, Oliver County, North Dakota, 5th Principal Meridian



Data Source(s): World Imagery (2013); Minnesota Power (2013); Westwood Professional Services, Inc (2013)

Data are approximate and subject to change

Legend

- Turbine
- Turbine Access Road
- Parcel & Lot Boundary
- Underground Collection Line
- Wind Project Improvement Easement
- ROW Limit
- Construction Easement
- 1/4 Section Line

N 1/4 SE 1/4 of Sec. 15 T141N R87W	
Wind Project Improvement Easement	1.72 Acres

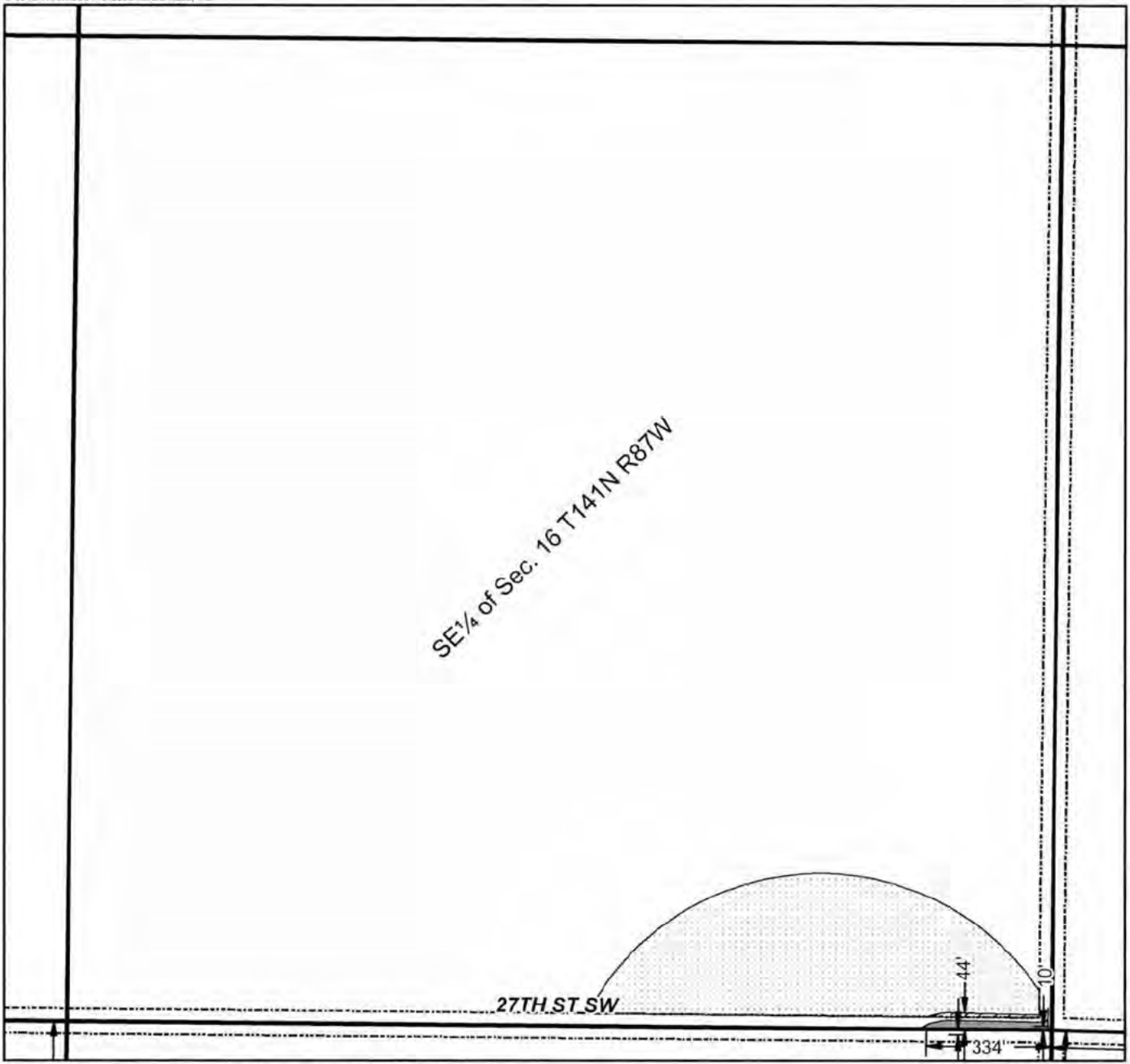
B4 - 27.1
Rev. A



Westwood Professional Services, Inc.
7699 Anagram Drive
Eden Prairie, MN 55344
PHONE 952-937-5150
FAX 952-937-5822
TOLL FREE 1-888-937-5150
www.westwoodps.com

Bison 4
Oliver County, ND
Exhibit B - Easement Plan

Map Document: P:\0001765.00\GIS\1301020\Bison4_Ext\main\Plan_Schedule\Sec_BW_1301020_P027-1.mxd 8/20/2013 10:38:34 AM



Data Source(s): World Imagery (2013); Minnesota Power (2013); Westwood Professional Services, Inc. (2013).

Data are approximate and subject to change.

Legend

- Turbine
- Underground Collection Line
- Turbine Access Road
- Wind Project Improvement Easement
- Construction Easement
- Parcel & Lot Boundary
- ROW Limit
- 1/4 Section Line

SE 1/4 of Sec. 16 T141N R87W	
Wind Project Improvement Easement Area	0.06 Acres



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Bison 4
Oliver County, ND
Exhibit B - Easement Plan

NONPUBLIC DATA HAS BEEN REMOVED

MINNESOTA POWER
ATTN: JILL HELMER
30 WEST SUPERIOR STREET
DULUTH, MN 55802



88639 11/12/2013 1:30 PM PAGE: 1
BOOK: JJ PAGE: 233 FEES: \$38.00 MM MEMORANDUM OF EASEMENT
Kim Wilkens, OLIVER COUNTY RECORDER

By

Kim Wilkens



MEMORANDUM OF EASEMENTS

This Memorandum of Easements evidences a Wind Project Easement Agreement dated November 8, 2013 by and between **Keith G. Kessler and Deanna A. Kessler, husband and wife** and **Calvin J. Kessler and Jeannette A. Kessler, husband and wife** ("Owner"), as owner(s) of the real property described on attached **Exhibit A** ("Owner's Property") and Minnesota Power a division of ALLETE, Inc., a Minnesota corporation ("Minnesota Power" or "Developer") (the "Easement Agreement"). Capitalized terms used herein are given the same meaning as in the Easement Agreement.

The Easement Agreement provides, among other things, that for and in consideration of the payments therein provided for, and upon the terms, conditions, covenants, and provisions set forth at length therein, that Owner grants to Minnesota Power the following irrevocable and exclusive easements, covering all or portions of the Owner's Property, in connection with the development, construction, and operation of a wind energy project (individually each an "Easement" and collectively the "Easements"):

1. Turbine Site Easement
2. Access Easement
3. Collection Easement
4. Construction Easement
5. Wind Non-Obstruction Easement
6. Noise Easement
7. Overhang Easement
8. Met Tower Site Easement
9. Met Tower Access Easement

Attached as **Exhibit B** is a preliminary Easement Plan showing the approximate planned location of all Wind Project Improvements and Easements located on the Owner's Property. Within 180 days after completion of construction, Developer will deliver a final as-built Easement Plan to Owner showing the exact locations of all Wind Project Improvements as constructed on Owner's Property and all Easements. Such as-built Easement Plan (Exhibit C) will replace the attached Exhibit B and Developer may record Exhibit C in the public records.

The Easements are granted subject to Owner's retained right to use the affected portions of the Owner's Property for agricultural purposes that do not interfere with the Easements or the other rights granted to Developer in the Easement Agreement.

The Easement Agreement also provides as follows:

"Owner grants Developer an irrevocable, exclusive easement for the right and privilege to use, maintain and capture the free and unobstructed flow of wind currents over and across the Owner's Property."

And

"Owner shall not engage in any activity on Owner's Property that might interfere with wind speed or wind direction over any portion of the Wind Project; cause a decrease in the output or efficiency of any Turbine or accuracy of any meteorological equipment; or otherwise interfere with Developer's operation of the Wind Project or exercise of any rights or the Easements granted in this Agreement"

Unless earlier terminated as provided therein, the Easement Agreement runs through November 30, 2064.

The Easements and any rights or obligations in the Easement Agreement run with the Owner's Property affected and are binding on, and inure to the benefit of, Owner and Developer and their respective mortgagees, successors and assigns, heirs, personal representatives, tenants, or persons claiming through them

Reference is hereby made to the Easement Agreement as to all remaining terms thereof. This Memorandum of Easements is prepared, signed, and acknowledged solely for recording purposes and does not modify, increase, decrease, or in any other way affect the rights, duties, and obligations of Owner or Minnesota Power under the Easement Agreement.

EXHIBIT A

E½ of Section 21

In T141N R87W, of the 5th Principal Meridian, Oliver County, North Dakota.



Data Source(s): World Imagery (2013); Minnesota Power (2013); Westwood Professional Services, Inc. (2013).

Data are approximate and subject to change.

Legend

- Turbine
- Underground Collection Line
- Turbine Access Road
- Wind Project Improvement Easement
- Construction Easement
- Parcel & Lot Boundary
- ROW Limit
- 1/4 Section Line

SE 1/4 of Sec. 21 T141N R87W	
Wind Project Improvement Easement Area	0.87 Acres

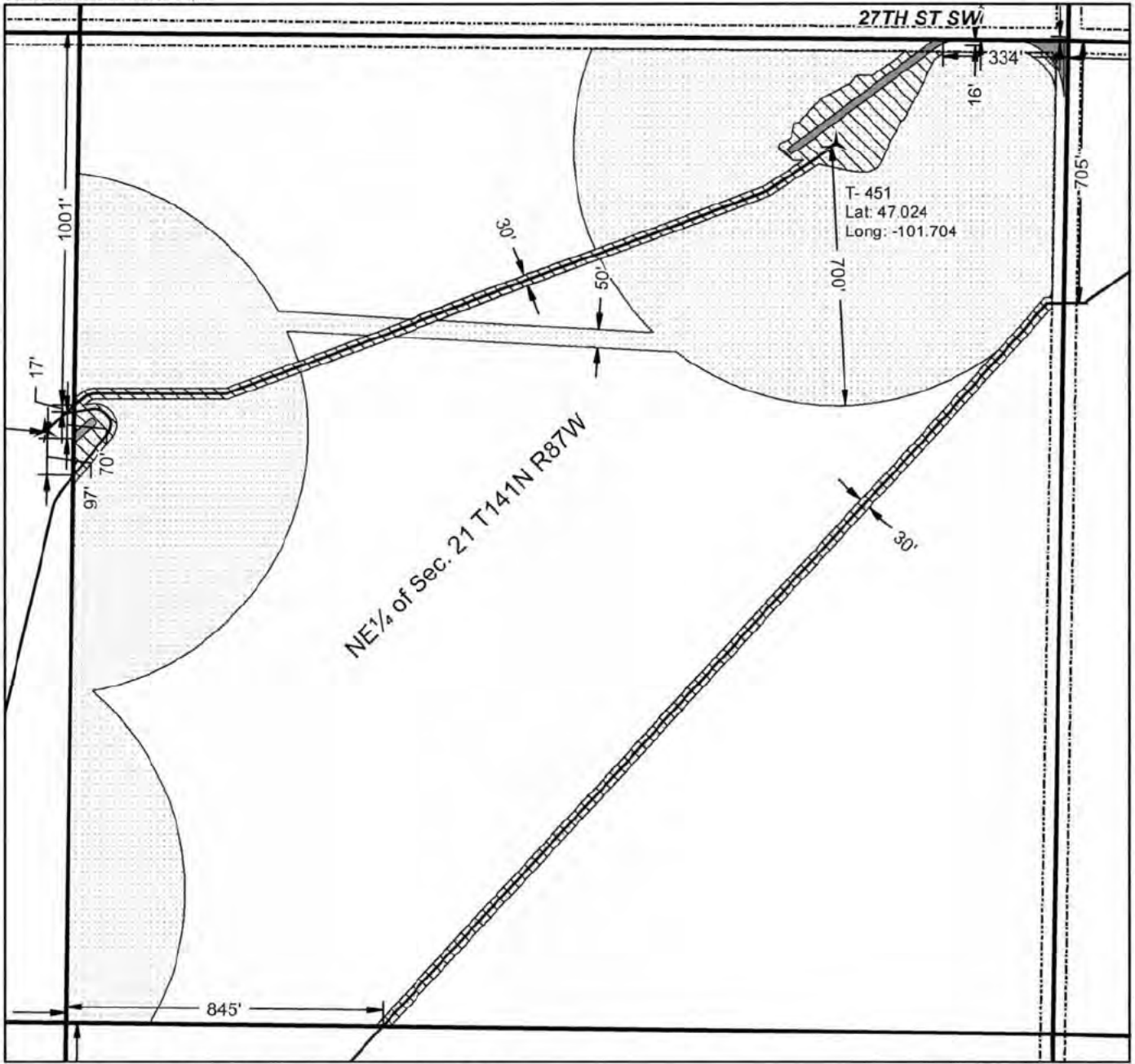


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Rev. C



Westwood Professional Services, Inc.
7699 Anagram Drive
Eden Prairie, MN 55344
PHONE 952-937-5150
FAX 952-937-5822
TOLL FREE 1-888-937-5150
www.westwoodps.com









Bison 4
Oliver County, ND
Exhibit B - Easement Plan



Data Source(s): World Imagery (2013), Minnesota Power (2013), Westwood Professional Services, Inc. (2013)

Data are approximate and subject to change

Legend

-  Turbine
-  Underground Collection Line
-  Turbine Access Road
-  Wind Project Improvement Easement
-  Construction Easement
-  Parcel & Lot Boundary
-  ROW Limit
-  1/4 Section Line

NE 1/4 of Sec. 21 T141N R87W	
Wind Project Improvement Easement Area	5.25 Acres



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Rev. D



Westwood Professional Services, Inc.
7609 Anagram Drive
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TOLL FREE 1-888-937-5150
www.westwoodps.com

Bison 4
Oliver County, ND
Exhibit B - Easement Plan

NONPUBLIC DATA HAS BEEN REMOVED



88700 12/9/2013 2:12 PM PAGE: 1 OF 5
 BOOK: JJ PAGE: 262 FEES: \$32.00 MM MEMORANDUM OF EASE
 Kim Wilkens, OLIVER COUNTY RECORDER

By MM Aulby Esr Deputy

MINNESOTA POWER
 ATTN: JILL HELMER
 30 WEST SUPERIOR STREET
 DULUTH, MN 55802



MEMORANDUM OF EASEMENTS

This Memorandum of Easements evidences a Wind Project Easement Agreement dated December 5, 2013 by and between **Keith G. Kessler and Deanna A. Kessler, husband and wife** ("Owner"), as owner(s) of the real property described on attached **Exhibit A** ("Owner's Property") and Minnesota Power a division of ALLETE, Inc., a Minnesota corporation ("Minnesota Power" or "Developer") (the "Easement Agreement"). Capitalized terms used herein are given the same meaning as in the Easement Agreement.

The Easement Agreement provides, among other things, that for and in consideration of the payments therein provided for, and upon the terms, conditions, covenants, and provisions set forth at length therein, that Owner grants to Minnesota Power the following irrevocable and exclusive easements, covering all or portions of the Owner's Property, in connection with the development, construction, and operation of a wind energy project (individually each an "Easement" and collectively the "Easements"):

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6. Noise Easement
7. Overhang Easement
8. Met Tower Site Easement
9. Met Tower Access Easement

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The Easements are granted subject to Owner's retained right to use the affected portions of the Owner's Property for agricultural purposes that do not interfere with the Easements or the other rights granted to Developer in the Easement Agreement.

The Easement Agreement also provides as follows:

"Owner grants Developer an irrevocable, exclusive easement for the right and privilege to use, maintain and capture the free and unobstructed flow of wind currents over and across the Owner's Property."

And

"Owner shall not engage in any activity on Owner's Property that might interfere with wind speed or wind direction over any portion of the Wind Project; cause a decrease in the output or efficiency of any Turbine or accuracy of any meteorological equipment; or otherwise interfere with Developer's operation of the Wind Project or exercise of any rights or the Easements granted in this Agreement"

Unless earlier terminated as provided therein, the Easement Agreement runs through November 30, 2064.

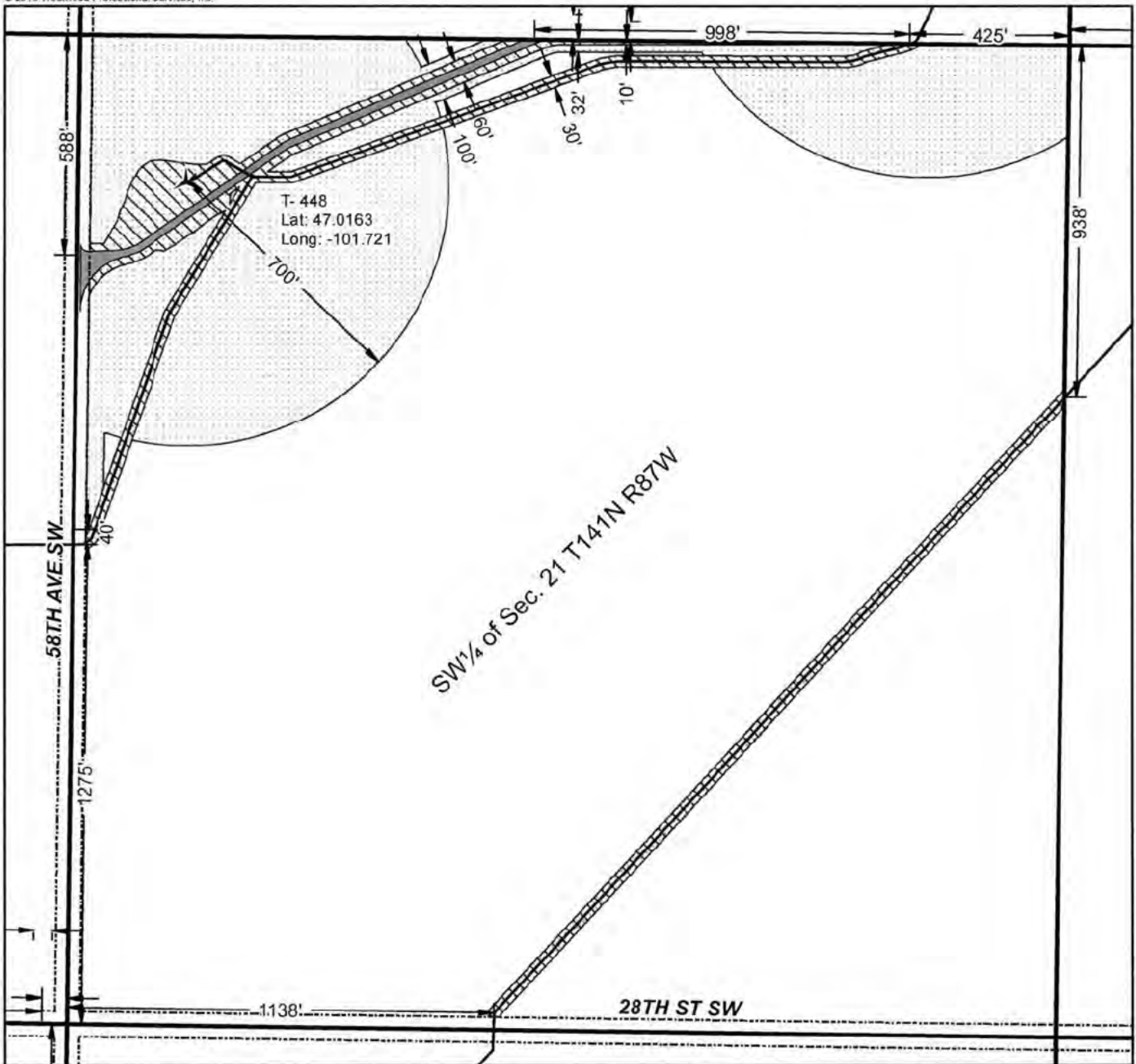
The Easements and any rights or obligations in the Easement Agreement run with the Owner's Property affected and are binding on, and inure to the benefit of, Owner and Developer and their respective mortgagees, successors and assigns, heirs, personal representatives, tenants, or persons claiming through them

Reference is hereby made to the Easement Agreement as to all remaining terms thereof. This Memorandum of Easements is prepared, signed, and acknowledged solely for recording purposes and does not modify, increase, decrease, or in any other way affect the rights, duties, and obligations of Owner or Minnesota Power under the Easement Agreement.

EXHIBIT A

SW $\frac{1}{4}$ of Section 21

In T141N R87W, of the 5th Principal Meridian, Oliver County, North Dakota.



Data Source(s): World Imagery (2013); Minnesota Power (2013); Westwood Professional Services, Inc. (2013).

Data are approximate and subject to change.

Legend

- Turbine
- Underground Collection Line
- Turbine Access Road
- Wind Project Improvement Easement
- Construction Easement
- Parcel & Lot Boundary
- ROW Limit
- 1/4 Section Line

SW 1/4 of Sec. 21 T141N R87W	
Wind Project Improvement Easement Area	6.44 Acres



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Oliver County, ND
Exhibit B - Easement Plan