# Towers and power.

## The facts behind Bison I Wind Energy Center.

It takes more than wind to turn the 332-foot rotors on a wind turbine. It takes landowners, planning and delivery to give the promise of clean, renewable energy. That's what we'll give you, and here's what it will take.

- Thirty-three 2.3 MW turbines
- Annual output of approximately 300,000 megawatt hours of energy
- Enough energy to power 33,000 homes each year
- Estimated $180 million project will be constructed in two phases:
  - 16 completed by December 2010
  - 17 additional turbines completed by November 2011

*Wind Turbine:* Siemens SWT, 2.3 MW, 101

Rotor diameter: 332 feet

Blade length: 161 feet

Hub height: 262 feet

Total height with blade extended straight up: 428 feet

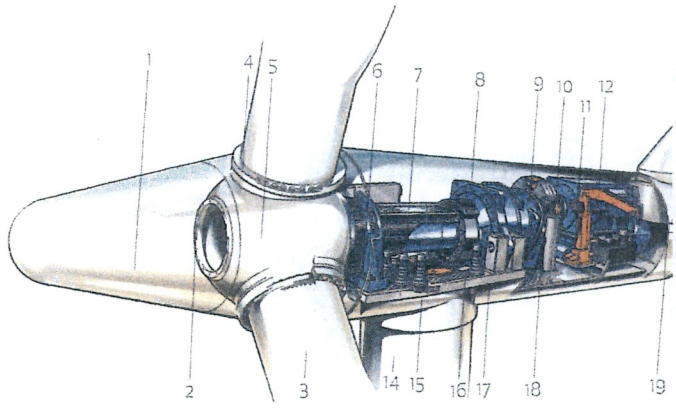
Tip speed: 70-190 mph

Cut in wind speed: 9 mph

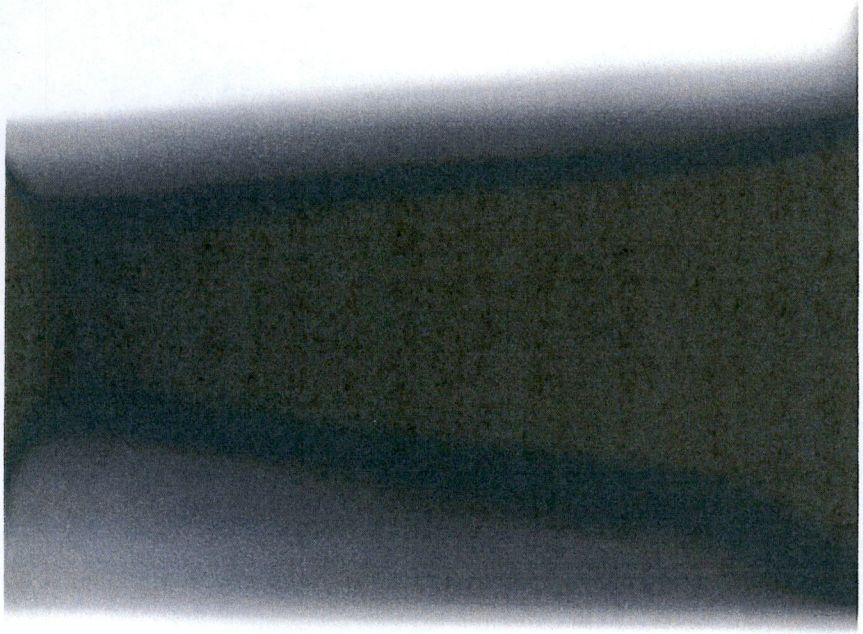
Cut out wind speed: 56 mph



Siemens SWT, 2.3 MW, 101




1 Spinner
2 Spinner bracket
3 Blade
4 Pitch bearing
5 Rotor hub
6 Main bearing
7 Main shaft
8 Gearbox
9 Brake disc
10 Coupling
11 Generator
12 Service crane
13 Meteorological sensors
14 Tower
15 Yaw ring
16 Yaw gear
17 Nacelle bedplate
18 Oil filter
19 Canopy
20 Generator fan



For more information on the Bison I Wind Energy Center contact:


**Dave Schmitz**
*General Manager – MP Renewable Operations, North Dakota*
701. 222. 8828 ext. 112
Cell: 701.426.5287

**Ron Gullicks**
*Bison I Project Manager*
218. 722. 5642 ext. 2977
Cell: 218. 591. 9875

**Amy Rutledge**
*Minnesota Power Communications Manager (Media Inquiries)*
218. 723. 7400


www.mnpower.com

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# WIND PROJECT OPTION AGREEMENT

This Wind Project Option Agreement ("Option") is made as of June 2, 2008/9 by and between Keith Kessler and Deanna Kessler, husband and wife, and ("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 Owner the non-refundable sum of $2,520.00 ($7.00 per acre) within 30 business days of the date hereof and on the anniversary hereof (the "Option Payment(s)"). If, within 8 months of the date hereof, Developer enters into an option agreement for wind development purposes with another landowner 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").

4. Exercise of Option. Developer shall give written notice to Owner of the exercise of this Option. 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**.

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



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Unsigned WPOA 6-2-9

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 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 Towers"), 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 One Thousand Dollars ($1,000) per Met Tower per year.

(d) 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 during the Option Term and before execution of the Wind Project Easement Agreement.

(e) 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.

(f) 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. Confidentiality. Owner shall not disclose to others (except Owner's, legal counsel and financial advisors who recognize and agree to preserve and maintain the confidentiality of such information) the terms of this Option or information about Developer's methods, power production, or availability of wind resources on the Owner's Property unless the



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information is already in the public domain. Owner also agrees not to use such information for Owner's own benefit or permit its use by others for their benefit or to the detriment of Developer.

9. 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 & Deanna Kessler
6001 26th Street SW
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.

10. 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.

11. 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.

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

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

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

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

OWNER:

Keith Kessler

Deanna Kessler

DEVELOPER:

By: Eric Norberg

Its: VP

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

The foregoing instrument was acknowledged before me this 2 day of June, 2008, by Eric Norberg the VP of RendField Land Company, Inc., a Minnesota corporation, on behalf of the company.

Notarial Stamp or Seal

JILL S. HELMER
NOTARY PUBLIC - MINNESOTA
My Commission Expires Jan. 31, 2013

Jill Helmer
Notary Public

STATE OF North Dakota )
) SS.
COUNTY OF Mercer )

The foregoing instrument was acknowledged before me this 18th day of May, 2008, by Keith Kessler and Deanna Kessler, husband and wife.

Notarial Stamp or Seal

LINDA A. WIEDRICH
Notary Public
State of North Dakota
My Commission Expires Feb. 28, 2014

Linda A. Wiedrich
Notary Public



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## ATTACHMENT 1

**Legal Description of Owner's Property**

The SE¼ of Section 1 and the E½ of the E½ and NW¼ of SE¼ of Section 12, ALL in Township 141 North, Range 88 West, Mercer County, North Dakota.



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## ATTACHMENT 2

## WIND PROJECT EASEMENT AGREEMENT

This Wind Project Easement Agreement is made as of _____ by and between Keith Kessler and Deanna Kessler, husband and wife, ("Owner"), as owners of the real property described on attached **Exhibit A** ("Owner's Property"), and RendField Land Company, Inc., a Minnesota corporation "Developer").

1. **Purpose**. This Agreement establishes the rights of the parties and their duties to each other with regard to the financing, construction, operation, repair, maintenance, replacement, and removal of all Wind Project Improvements (as defined below) in connection with Developer's Wind Project, whether located on or off Owner's Property.

2. **Definitions**. Capitalized terms used in this Agreement have the meaning given them in the text of the Agreement or in this definitions section.

"Access Rights" means the right of unobstructed ingress and egress to and from the Wind Project Improvements by Developer, its agents, contractors, successors and assigns.

"Collection Facilities" means the underground and above ground electrical collection and telecommunications lines, splice boxes, and all other devices and equipment used to connect the Turbines to electrical collection lines connected to the power grid and to the Wind Project's Met Towers and operations and maintenance facilities.

"Easements" means the Turbine Site Easement, Access Easement, Collection Easement, Construction Easement, Wind Non-Obstruction Easement, Noise Easement, Overhand Easement, Met Tower Site Easement and Met Tower Access Easement.

"Easement Properties" means the Turbine Sites, the Access Easement Property, Collection Easement Property, Construction Easement Property, Noise Easement Property, Overhead Easement Property, Met Tower Sites, and Met Tower Access Easement Property, all as described in Section 6 of this Agreement.

"Effective Date" means the date when all conditions precedent set forth in Section 5 of this Agreement are satisfied or waived, and all other documents required by Developer have been signed and delivered by Owner.

"Environmental Laws" shall mean any federal, state or local law, statute, code enactment, ordinance, rule, regulation, permit, consent, approval, authorization, license, judgment, order, writ, decree, injunction, common law (including without limitation the common law respecting nuisance and tortious liability), or other requirement having the force and effect of law or regulation, relating to the protection of human health and safety, occupational health and safety, the environment, or natural resources and wildlife, including, without limitation (i) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980(CERCLA), (ii) the Solid Waste Disposal Act, (iii) the Resource Conservation and Recovery Act (RCRA),



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(iv) the Toxic Substances Control Act (TSCA), (v) the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), (vi) the Clean Water Act, (vii) the Clean Air Act,, (viii) the Occupational Safety and Health Act (OSHA), (ix) the Safe Drinking Water Act, and (x) the Minnesota Environmental Response and Liability Act (MERLA), all as amended and in effect from time to time.

"**Exhibit B**" means the preliminary Easement Plan attached to this Agreement at the time it is signed showing the approximate planned location of all Wind Project Improvements and Easements located on the Owner's Property.

"**Exhibit C**" means the final as-built Easement Plan to be attached to this Agreement by Developer as a replacement for **Exhibit B** after construction of the Wind Project Improvements showing the exact locations of all Wind Project Improvements as constructed on Owner's Property and all Easements. Developer shall deliver **Exhibit C** to Owner within one hundred eighty (180) days after completion of construction of the Wind Project Improvements and after **Exhibit C** is delivered to Owner, any references in this Agreement that refer to **Exhibit B** shall be deemed to refer to **Exhibit C**.

"Hazardous Substance" means any substance which is defined as a hazardous substance, hazardous material, hazardous waste, pollutant, contaminant, or extremely or imminently hazardous substance or material under any Environmental Law.

"Met Tower" means a tower used primarily to gather and transmit meteorological data relating to the Wind Project, and includes the tower's foundations, meteorological data acquisition equipment, power source, underground data, and electrical collection lines.

"Met Tower Site" means each of those portions of Owner's Property on which a Met Tower is located. Met Tower Sites are identified and located as shown on **Exhibit B**, subject to final location determination in **Exhibit C**.

"Pre-Construction Activities" means any activities that Developer shall perform on Owner's Property before the Effective Date, which shall include but not be limited to soil borings, environmental assessments, micrositing and surveying.

"Turbine" means a wind turbine generator used to convert wind energy to electrical energy together with the foundation and tower on which it is mounted, as well as a pad mounted transformer, batteries and other devices for storage of electrical energy serving the wind turbine generator located on the Turbine Site.

"Turbine Site" means each of those portions of Owner's Property on which a Turbine is located. Turbine Sites are identified and located as shown on **Exhibit B**, subject to final location determination in **Exhibit C**.

"Wind Energy Purposes" means converting wind energy into electrical energy, collecting, storing, and transmitting that electrical energy, and all related development activities that Developer reasonably determines appropriate, including, without limitation, the right to



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study wind speed and feasibility of wind energy conversion on the Easement Properties; to construct, operate and maintain Turbines and Collection Facilities; and to use the Access Rights.

"Wind Project" means Developer's Hannover Wind Energy Center and includes all Wind Project Improvements whether located on or off Owner's Property.

"Wind Project Improvements" means the Turbines, Collection Facilities, Met Towers, access roads, entrances, fences and gates, drainage systems, signs, information kiosk, operations and maintenance building, and all other structures, rights and facilities used in the construction, operation and maintenance of the Wind Project.

3. **Pre-Construction Activities**. Owner acknowledges that prior to commencing construction of the Wind Project, Developer may need to access Owner's Property to conduct Pre-Construction Activities. Owner shall receive a payment in the amount of Two Thousand-Five Hundred Dollars ($2,500) in consideration for the right to access Owner's Property prior to the Effective Date.

4. **Term**. The term of this Agreement shall begin on the date first written above and terminate concurrently with the Easements. The Term of the Easements ("Term") shall begin on the Effective Date and end on the fiftieth ($50^{th}$) anniversary thereof, unless terminated as provided in this Agreement. If, within five (5) years of the date hereof, the Developer has not initiated construction of Wind Project Improvements on the Easement Properties, Owner may, upon notice to Developer, immediately terminate this Agreement; unless such failure to initiate construction of Wind Project Improvements is caused by unavoidable delays in obtaining the permits described in Section 5.5 (provided that Developer promptly commences construction after receipt of such permits).

5. **Conditions Precedent**. The Easements shall be of no force and effect until Developer is reasonably satisfied all of the following have occurred, or been waived by Developer. If any condition precedent is not satisfied or waived by Developer, Developer may terminate this Agreement upon notice to Owner and, in such event, Developer's sole obligation hereunder shall be to restore Owner's Property to substantially its condition as before Developer's occupancy.

5.1 Environmental Conditions. Receipt by Developer of environmental consultants' reports confirming there are no environmental conditions on the Easement Properties that would interfere with the Wind Project Improvements or cause Developer to incur environmental liability.

5.2 Cultural Properties. Receipt by Developer of reports confirming there are no traditional cultural properties, historic sites, or antiquities of state or national significance on the Easement Properties that would interfere with the Wind Project Improvements.

5.3 Soil Tests. Receipt of soil test results indicating that the Easement Properties are adequate to install Turbine foundations.

5.4 Wind Analysis. Receipt of reports from professional engineers and meteorologists that each Turbine on the Easement Properties shall produce an adequate amount of wind energy as determined by Developer.

5.5 Permits. Receipt by Developer of all permits required for construction and operation of the Wind Project Improvements comprising the Wind Project, whether located on or off the Owner's Property.

5.6 Title. Approval by Developer of Owner's title to the Easement Properties based on title insurance commitments or title opinions obtained by Developer at its expense.

5.7 Subordination. Receipt by Developer from third parties, such as Lienholders and tenants of all subordination, non-disturbance and other agreements necessary as reasonably determined by Developer to assure Developer's right to undisturbed use and enjoyment of the Easement Properties according to the terms of this Agreement.

5.8 Adjoining Easements. Receipt by Developer of easements from adjoining property owners as reasonably deemed necessary by Developer to permit construction of the Wind Project.

5.9 Turbine Layout and Site Suitability. Receipt by Developer of analysis by a recognized wind resource analysis firm that the turbine selected for project is suitable for the site and that energy output projections from preliminary turbine layout support project economics.

6. **Grant of Easements**. Owner grants to Developer the following easements (collectively, "Easements"). Each of the Easements granted is irrevocable and for the exclusive use and benefit of Developer, its agents, and contractors unless otherwise specified in this Agreement. The Easements are granted subject to Owner's retained right to use the Easement Properties for agricultural uses that do not and will not interfere, in Developer's reasonable determination under the circumstances, with the Wind Project Improvements, Developer's operations, or the enjoyment of the rights granted to Developer in this Agreement. From and after the Effective Date, Developer shall pay Owner fair market value for actual crop loss and damage resulting from pre-construction, construction and operation and maintenance activities associated with Wind Project Improvements. 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.

6.1 Turbine Site Easement. Owner grants Developer an easement to construct, operate, replace, relocate, remove, and maintain a Turbine, together with associated roads and parking areas on each Turbine Site. This easement is referred to as the "Turbine Site Easement."

6.2 Access Easement. Owner grants Developer an easement on those portions of Owner's Property as shown on **Exhibit B** for unobstructed vehicular and pedestrian ingress to and egress



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from the Wind Project Improvements, whether located on or off Owner's Property. This easement is referred to as the "Access Easement" and the property subject to the burden of this easement is referred to as the "Access Easement Property." Developer shall have the right to travel over, across and along the Access Easement Property by means of existing roads and lanes, and by roads Developer or Owner may construct or improve from time to time on, over, and across the Access Easement Property.

Owner reserves the right to use all roads on the Access Easement Property provided, however, that Owner shall not and shall not permit others to obstruct or damage the roads or in any other way interfere with Developer's rights under this Access Easement. If all or a part of the Access Easement Property constitutes a part of the width of a larger access easement straddling a property line between Owner's Property and the abutting property of an adjoining property owner, then Owner and Developer hereby grant such adjoining property owner an easement over such portion of the Access Easement Property for ingress and egress to the adjoining property for the conduct of farming activities on the adjoining property.

6.3 Collection Easement. Owner grants Developer an easement for the construction, operation, maintenance, replacement, relocation or removal of Collection Facilities on and under those portions of the Owner's Property as shown on **Exhibit B**. This easement is referred to as the "Collection Easement" and the property subject to the burden of this easement is referred to as the "Collection Easement Property."

6.4 Construction Easement. Owner grants Developer an easement for purposes of constructing, maintaining, repairing, replacing, and removing all or any part or element of the Wind Project Improvements. This easement is referred to as the "Construction Easement" and the property subject to the burden of this easement is referred to as the "Construction Easement Property." The Construction Easement Property is generally shown on **Exhibit B**. Developer may exercise its right to use all or any part of the Construction Easement Property as and when Developer deems it necessary or advisable to do so to perform the activities for which this Construction Easement is granted. In exercising its rights under this Construction Easement, Developer agrees to minimize interference with the necessary movement of Owner's livestock across the Owner's Property. After each use of the Construction Easement, Developer to the extent reasonably possible shall restore the Construction Easement Property to the condition it was in before Developer's use.

When installing, maintaining or removing the nacelle and rotor from any Turbine, this Construction Easement also shall permit the following: (a) (for the purpose of securing tag lines) travel on foot or in a pickup truck, SUV, small forklift or other similar vehicles onto Owner's Property up to seven hundred (700) feet in any direction from the center of the Access Easement Property; and (b) an erection crane to be driven on Owner's Property.

6.5 Wind Non-Obstruction Easement. 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. This easement is referred to as the "Wind Non-Obstruction Easement" and the property subject to the burden of this easement is referred to as the "Wind Non-Obstruction Easement Property." 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 ("Interference"). Owner reserves the right to erect structures on Owner's Property in compliance with all applicable laws and ordinances except as specifically limited in this Agreement. Owner must consult with and obtain Developer's prior written approval as to the location of all structures greater than forty (40) feet in height located one thousand (1000) feet or less from any Turbine or Met Tower whether or not located on the Wind Project. Approval shall be based on whether, in Developer's sole judgment, informed by appropriate professional engineering and meteorological opinions, the proposed structures at the proposed location are likely to cause Interference.

This Wind Non-Obstruction Easement shall not be interpreted to prevent Owner from granting oil and gas exploration or production rights on Owner's Property, however no drilling rigs or other structures shall be located within three hundred (300) feet of any Turbine or within two hundred twenty-five (225) feet of any Met Tower except with Developer's prior written consent. Owner shall notify Developer as soon as Owner knows of oil and gas exploration or production plans. To the extent it does not interfere with the proposed oil or gas exploration or production, Owner shall cooperate with Developer in the exercise of Owner's oil and gas rights to minimize Interference. In the event any oil and gas related activities are commenced on Owner's Property, Owner agrees not to object to an action by Developer against a third party to reasonably protect Developer's interests hereunder. In turn, Developer agrees not to interfere with Owner's right to surface damages from oil and gas operations, exploration, drilling or granting of pipeline easements, as long as any compensation that Owner may receive shall not diminish or adversely affect any compensation due to Developer for the Wind Project Improvements.

6.6 Noise Easement. Owner grants Developer an easement for the right and privilege to generate and maintain audible noise levels not in excess of fifty (50) dbA on and above the Owner's Property at any or all times of the day or night. This easement is referred to as the "Noise Easement" and the property subject to the burden of this easement is referred to as the "Noise Easement Property."

6.7 Overhang Easement. Owner grants Developer an easement for the right and privilege to permit the rotors of Turbines located on adjacent properties to overhang a portion of the Owner's Property identified and shown on **Exhibit B** (the "Overhang Easement Property") by no more than 150 feet at a height of at least 100 feet above the ground ("Overhang Easement"). Owner shall not interfere with the operation of Turbine rotors that overhang the Overhang Easement Property.

6.8 Met Tower Site Easement. Owner grants Developer an easement to construct, operate, replace, relocate, remove, and maintain a Met Tower and Collection Facilities on each Met Tower Site. This easement is referred to as the "Met Tower Site Easement."

6.9 Met Tower Access Easement. Owner grants Developer an easement for vehicular and pedestrian ingress and egress to and from each Met Tower ("Met Tower Access Easement") as

shown on Exhibit B ("Met Tower Access Easement Property"). This Met Tower Access Easement is an extension of the Access Easement; however, Developer shall not construct roads, lanes or other surface improvements in the Met Tower Access Easement except with the express written consent of Owner which consent will not be unreasonably withheld. After each use of the Met Tower Access Easement, Developer to the extent reasonably possible shall restore the Met Tower Access Easement to the condition it was in before Developer's occupancy.

7. **Easement Purchase Price and Grant of "Most Favored Nation" Status**. Developer shall pay Owner, as consideration for this Agreement, as follows:

- $5,000 per year per megawatt of manufacturer Turbine name plate capacity, increasing annually at the rate of two percent (2%) starting with the second year of commercial operation;
- $1,000 per Met Tower per year; and
- $200 per acre per year for every acre encumbered by Wind Project Improvements as shown on **Exhibit B**

(collectively, the "Annual Installment Payments"). The first Annual Installment Payment, pro-rated based on the number of days remaining in the year, shall be paid within fifteen (15) days of notice by Developer to Owner of the commercial operation date of the Project (the "Payment Date"). Subsequent Annual Installment Payments will be made on or before the anniversary of the Payment Date of each year during the remaining term.

If, within 8 months of the date hereof, Developer enters into an easement agreement for wind development purposes with another landowner within a 10 mile radius of the Easement Properties, which such easement agreement includes higher Annual Installment Payments, then this Wind Project Easement Agreement will be amended to reflect such higher payments.

8. **Taxes**. Developer shall pay any increase in the real property taxes on Easement Properties that is directly attributable to the installation of Wind Project Improvements or to a reclassification of the Easement Properties because of creation of this Agreement. If the Wind Project Improvements are subject to real property taxes, Developer shall request that the Wind Project Improvements be separately assessed and that taxing authorities bill Developer directly for taxes attributable to the Wind Project Improvements. Developer shall not be liable for taxes attributable to facilities installed by Owner or others on the Easement Properties, to the underlying value of the Easement Properties themselves, or for any increase due to any other cause. Developer agrees to reimburse Owner for any taxes paid by Owner that are properly payable by Developer under the terms of this Agreement. To receive reimbursement, Owner must submit any real property tax bill to Developer for reimbursement within a reasonable time after Owner receives the bill from a taxing authority. The parties agree to fully cooperate to obtain any available tax refunds or tax abatements. Notwithstanding any confidentiality provisions of this Agreement, if at any time, Developer seeks to dispute any real property taxes assessed against the Wind Project Improvements or attributable to the installation of the Wind Project Improvements and/or relating to the reclassification of the Easement Properties because of this Agreement (collectively "Assessments"), Developer may, at Developer's option, bring the appropriate proceedings (as determined by Developer in its sole and absolute discretion), in

Owner's name, Developer's name, or the names of Owner and Developer for purposes of challenging such Assessment for any year(s) during the Term and any renewals or extensions of the Term. Owner hereby gives Developer the necessary authority to challenge any such Assessments on Owner's behalf, to produce information and documents (including this Agreement) as may be necessary during the course of such Assessment proceedings, and agrees to cooperate with Developer with respect to such Assessment proceedings.

## 9. Developer's Duties and Representations

9.1 Care and Appearance. Developer shall at all times maintain the Wind Project Improvements in a neat, clean and presentable condition. Developer shall not willfully destroy Owner's Property and shall keep the Turbine Sites, Met Tower Sites, Access, Collection and Construction Easement Properties clean and free of debris created by Developer, its contractors, or others brought on to the Owner's Property by Developer. Developer shall be responsible for weed control on those portions of the Turbine Sites, Met Tower Sites, and Access Easement Properties not actively farmed by Owner or their tenant(s).

9.2 Fences and Gates. Developer shall consult with Owner and obtain Owner's approval of the location of all fences and gates that it intends to construct on Owner's Property. At Owner's request, Developer shall repair or replace any fences, gates or cattle guards damaged or removed in connection with Developer's activities on Owner's Property. Fences removed from the Easement Properties, if replaced, shall be re-built by Developer at its expense in mutually agreeable locations off the Turbine Sites, Met Tower Sites, and Access Easement Properties. Once completed, all replacement fences, gates and cattle guards shall be owned and maintained by Owner. To the extent possible, Developer will take into consideration the Owner's operations during periods of construction, maintenance or removal activity. Developer agrees to provide reasonable advance notice to Owner as to periods of construction, maintenance or removal activity by Developer so as to minimize inconvenience and interference with Owner's operations and to provide Owner with reasonable time for appropriate planning.

9.3 Insurance and Indemnity. Developer shall maintain commercial general liability insurance in an amount not less than Two Million Dollars ($2,000,000.00) of combined single limit liability coverage. Developer shall provide certificates of this insurance coverage to Owner promptly after execution of this Agreement and thereafter upon Owner's written request.

Developer will indemnify, hold harmless and defend Owner against liability for all personal injuries, liabilities, actions and claims to the extent that they are caused by Developer, its exercise of rights granted in this Agreement or its operations or activities on Owner's Property. Developer will also pay Owner's reasonable attorneys fees in connection with an indemnified claim. This indemnity does not cover losses of rent, business opportunities, crop production, profits and the like that may result from Owner's loss of use of the Easement Properties occupied by Wind Project Improvements or affected by easement rights granted in this Agreement. This indemnity does not apply if a claim is asserted by Owner's immediate family or business entities or trusts in which Owner has an interest ("Related Parties"). Owner authorizes Developer to take reasonable safety measures to reduce the risk that the Wind Project Improvements will cause harm or injury to people, livestock, other animals and property.

Nothing in this Agreement shall be construed to be a waiver by Owner or Related Parties for any claim of liability, personal injury or property damage caused by the willful misconduct or negligence of Developer.

9.4 Requirements of Governmental Agencies. Developer shall comply in all material respects with valid laws applicable to the Wind Project. Developer shall have the right, in its sole discretion and at its sole expense, in its name or Owner's name, to contest the validity or applicability to the Easement Properties or Wind Project of any law, ordinance, statute, order, regulation, property assessment or the like made by any governmental agency or entity. Developer shall control any such contest and Owner shall cooperate with Developer in every reasonable way in such contest, at no out-of-pocket expense to Owner.

9.5 Mechanic's Liens. Developer shall not permit any mechanic's liens arising out of Developer's use of the Easement Properties under this Agreement to be filed against the Easement Properties. If Developer wishes to contest any such lien, Developer shall, within sixty (60) days after it receives notice of the lien, provide a bond or other security Owner may reasonably request, or remove such lien from the Easement Properties in the manner provided by applicable law.

9.6 Environmental Laws. Developer shall not violate, and agrees to indemnify, hold harmless and defend Owner against, any violation on the Easement Properties by Developer, its agents or contractors, of any Environmental Laws and will not release or dispose of any Hazardous Substances on the Easement Properties.

9.7 Remediation of Glare and Shadow Flicker. Developer agrees that should Owner experience problems with glare or shadow flicker in Owner's house associated with the presence of the Turbines on Owner's Property or adjacent properties, Developer will promptly investigate the nature and extent of the problem and the best methods of correcting any problems found to exist. Developer at its expense, with agreement of Owner, will then promptly undertake measures such as tree planting or installation of awnings necessary to mitigate the offending glare or shadow.

9.8 Removal of Wind Project Improvements. Owner shall have no ownership or other interest in any Wind Project Improvements installed on the Easement Properties, and Developer shall have the express right, at any time and in its sole discretion, to remove one or more Turbines or other Wind Project Improvements from the Easement Properties. Owner expressly waives any statutory or common law liens to which Owner might be entitled against the Wind Project Improvements. Upon full or partial termination of any of the Easements, Developer shall remove all physical material pertaining to the Wind Project Improvements from the affected Easement Properties to a depth of thirty-six inches (36") beneath the soil surface, and restore the area formerly occupied by the Wind Project Improvements to substantially the same physical condition that existed immediately before the construction of the Wind Project Improvements (the "Removal Obligations"). If Developer fails to complete its Removal Obligations within twelve (12) months of full or partial termination of the applicable Easement, Owner may do so, in which case Developer shall reimburse Owner for costs of fulfilling Developer's Removal Obligations incurred by Owner.

9.9 Permanent Road Construction Requirements. On Easement Properties used as cropland, access roads needed for ongoing maintenance purposes will be constructed in a manner that minimizes impact on crops and consistent with cropland farming practices. Such roads will either be oriented in a north-south or east-west direction, parallel with crop row direction at the time of road construction.

9.10 Maximizing Project Development. Recognizing that there are economic and technical reasons to fully develop a wind project site, the Developer represents that it intends to fully develop a wind project in and around the Easement Properties in accordance with standard wind development practices.

## 10. Owner's Duties and Representations

10.1 Owner's Authority. Owner is the sole owner of the Owner's Property including the Easement Properties and has the unrestricted right and authority to sign this Agreement and to grant Developer the Easements and other rights granted in this Agreement. When signed by both parties, this Agreement constitutes a valid and binding agreement enforceable against Owner in accordance with its terms.

10.2 Exclusivity. Owner agrees that Developer shall have the exclusive right to convert all of the wind resources of the Owner's Property. Owner's activities and any grant of rights Owner makes to any third party, whether located on the Easement Properties or elsewhere, shall not, now or in the future, interfere in any way with Developer's exercise of any rights granted under this Agreement.

10.3 Liens and Tenants. Owner shall provide Developer with all information reasonably required for Developer, at its expense, to identify all liens and other exceptions to Owner's fee title ownership of the Easement Properties (collectively, "Liens;" holders of Liens and tenants are referred to as "Lienholders"). Owner shall cooperate with Developer to obtain a non-disturbance agreement from each Lienholder (recorded or unrecorded, at Developer's option), which provides that the Lienholder shall not disturb Developer's possession or rights under this Agreement or terminate this Agreement or the Easements so long as Owner is not entitled to terminate this Agreement or the Easements. If Developer and Owner are unable to obtain a non-disturbance agreement from a Lienholder, Developer shall be entitled (but not obligated) to withdraw from this Agreement or to make payments in fulfillment of Owner's obligations to the Lienholder and may deduct the amount of such payments from amounts due to Owner under this Agreement. Developer's rights under this Section 10.3 are subordinate to Owner's rights under Section 6.5 above as the same relates to oil and gas exploration and/or production

10.4 Requirements of Governmental Agencies. Owner shall assist and fully cooperate with Developer, at no out-of-pocket expense to Owner, in complying with or obtaining any zoning and Owner's Property use permits and approvals, building permits, environmental impact reviews or any other governmental approvals required for the financing, construction, installation, replacement, relocation, maintenance, operation or removal of the Wind Project Improvements, including execution of applications for such approvals.

10.5 Indemnity. Owner agrees to indemnify and hold harmless Developer, its agents, employees, successors, and assigns against all personal injuries, liabilities, causes of actions, and claims, including attorneys fees to the extent caused by the willful misconduct or negligence of Owner not covered by insurance which protects Developer from loss.

10.6 Hazardous Materials. Owner represents and warrants to the best of Owner's knowledge and belief that there are no coal shafts, coal mines, abandoned wells, solid waste disposal sites, Hazardous Substances, or underground storage tanks located on the Easement Properties; that the Easement Properties do not contain levels of petroleum or other Hazardous Substances which require remediation; and, that the Easement Properties are not subject to any judicial or administrative action, investigation or order under any applicable Environmental Laws or regulations. Owner warrants that Owner has done nothing to contaminate the Easement Properties with petroleum or other Hazardous Substances. Owner agrees to indemnify and hold Developer harmless against any claims or losses resulting from Owner's violation of any applicable Environmental Laws, except those resulting from Developer's activities on the Easement Properties.

10.7 Hunting. If Owner hunts and/or discharges firearms on and near the Easement Properties, Owner shall take such precautions as are reasonable to ensure the safety of Developer's site personnel and the protection of Wind Project Improvements on the Easement Properties during and after construction of the Wind Project.

10.8 Snowmobiling. Owner may allow Owner's guests to use the Owner's Property and the Easement Properties, except the Turbine and Met Tower Site Properties, for recreational purposes except at times or under circumstances that adversely affect public health and safety or operation and safety of the Wind Project Improvements. If Owner uses snowmobiles in the vicinity of the Easement Properties, it shall take such reasonable precautions so as to ensure the safety of Owner's guests, Developer's site personnel, and the protection of Wind Project Improvements on the Easement Properties during and after construction of the Wind Project.

11. **Termination.**

11.1 Developer's Right to Terminate. Developer shall have the right to terminate this Agreement as to all or any part of the Easement Properties, or as to any Turbine or other Wind Project Improvement, at any time, effective upon thirty (30) days' written notice to Owner.

11.2 Owner's Right to Terminate. In addition to Owner's right to terminate described in Section 4 (for Developer's failure to timely initiate construction of the Wind Project Improvements) and except as qualified by Sections 12 and 13, Owner shall have the right to terminate this Agreement and the Easements only as to those Easement Properties where: (a) a material default in the payment by Developer of Annual Installment Payments under this Agreement shall have occurred and remains uncured; (b) Owner simultaneously gives Developer and all Mortgagees and Assignees written notice of the default setting forth in reasonable detail the facts pertaining to the default and specifying the method of cure; and, (c) the default shall not

have been remedied within thirty (30) days after Developer, or within ninety (90) days in the case of all Assignees and Mortgagees, receives the written notice.

Except as specifically allowed by this Section 11, this Agreement and the Easements shall not be terminable by Owner under any circumstances. Owner's sole remedy for Developer's breach of its duties under this Agreement (except its duty to timely pay Annual Installment Payments and failure to timely fulfill its Removal Obligations after termination under Section 9.8) shall be an action at law or in equity for money damages or specific performance, together with reasonable attorneys' fees if Owner prevails.

11.3 Effect of Termination. Upon full or partial termination of this Agreement, whether as to all of the Easement Properties or only as to some or parts of the Easement Properties, Developer shall: (a) provide Owner with a recordable termination of all of Developer's right, title and interest in the Easement Properties, or in those parts of the Easement Properties as to which this Agreement has been terminated, and (b) as soon as reasonably practicable after termination, remove all Wind Project Improvements from those Easement Properties as to which this Agreement was terminated in compliance with its Removal Obligations.

## 12. Financing and Assignment by Developer

12.1 Right to Mortgage and Assign. Developer may, upon notice to Owner, without Owner's consent or approval, 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 Properties, or the Wind Project Improvements (collectively, its "Wind Project Assets"). These various security interests in all or a part of the Wind Project Assets are collectively referred to as "Mortgages" and the holders of the Mortgages, their designees and assigns are referred to as "Mortgagees." Developer's notice to Owner shall include the name and address of each Mortgagee and/or Assignee (as defined below). Developer may also, without Owner's consent, sell, convey, lease, or assign all or any portion of its Wind Project Assets on either an exclusive or a non-exclusive basis, or grant sub-easements co-easements, separate easements, leases, licenses or similar rights, however denominated (collectively, "Assignment"), to one or more persons or entities (collectively, "Assignees"). Assignees and Mortgagees shall use the Wind Project Assets only for the uses permitted under this Agreement. Assignees and Mortgagees shall have all rights and remedies allowed them under then-existing laws, except as limited by their individual agreements with Developer, provided that under no circumstances shall any Mortgagee or Assignee have any greater rights of ownership or use of Owner's Property than the rights granted to Developer in this Agreement.

12.2 Owner Obligations. Owner agrees to consent in writing to financing documents as may reasonably be required by Mortgagees. As a precondition to exercising any rights or remedies related to any alleged default by Developer under this Agreement, Owner shall give written notice of the default to each Mortgagee and Assignee at the same time it delivers notice of default to Developer, specifying in detail the alleged event of default and the required remedy. Each Mortgagee and Assignee shall have the same amount of time to cure the default as to Developer's entire interest or its partial interest in the Wind Project Assets as is given to Developer and the same right to cure any default as Developer or to remove any property of

Developer, Mortgagees or Assignees located on the Easement Properties. The cure period for each Mortgagee shall begin to run at the end of the cure period given to Developer in this Agreement, but in no case shall the cure period for any Mortgagee be less than ninety (90) days after receipt of the default notice. Failure by Owner to give a Mortgagee or Assignee notice of default shall not diminish Owner's rights against Developer, but shall preserve all rights of the Mortgagee or Assignee to cure any default and to remove any property of Developer, the Mortgagee or Assignee located on the Easement Properties.

12.3 Mortgagee/Assignee Obligations. Any Mortgagee or Assignee that does not directly hold an interest in the Wind Project Assets, or whose interest is held solely for security purposes, shall have no obligation or liability under this Agreement prior to the time the Mortgagee or Assignee directly holds an interest in this Agreement, or succeeds to absolute title to Developer's interest. A Mortgagee or Assignee shall be liable to perform obligations under this Agreement only for and during the period it directly holds such interest or absolute title. Any Assignment permitted under this Agreement shall not release Developer or other assignor from obligations accruing before the date that this Agreement is assumed by the Assignee.

12.4 Right to Cure Defaults/Notice of Defaults/Right to New Easement. To prevent termination of this Agreement, the Easements, or any partial interest in this Agreement and the Easements, Developer, any Mortgagee or Assignee shall have the right, but not the obligation, at any time to perform any act necessary to cure any default and to prevent the termination of this Agreement or any interest in the Wind Project Assets.

12.5 Extended Cure Period. If any default by Developer under this Agreement cannot be cured without obtaining possession of all or part of the Wind Project Assets, then any such default shall be deemed remedied if a Mortgagee: (a) within ninety (90) days after receiving notice from Owner as set forth in Section 12.2, acquires possession of all or part of the Wind Project Assets, or begins appropriate judicial or nonjudicial proceedings to obtain the same; (b) diligently prosecutes any such proceedings to completion; and (c) after gaining possession of all or part of the Wind Project Assets, cures defects and performs all other obligations as and when the same are due in accordance with the terms of this Agreement. If a Mortgagee is prohibited by any court or by operation of any bankruptcy or insolvency laws from commencing or prosecuting the proceedings described above, the ninety (90) day period specified above for commencing proceedings shall be extended for the period of such prohibition.

12.6 Certificates, etc. Owner shall execute estoppel certificates (certifying as to truthful matters, including without limitation that no default then exists under this Agreement, if such be the case), consents to assignment and non-disturbance agreements as Developer or any Mortgagee or Assignee may reasonably request from time to time. Owner and Developer shall cooperate in amending this Agreement from time to time to include any provision that may be reasonably requested by Developer or any Mortgagee or Assignee to implement the provisions contained in this Agreement or to preserve a Mortgagee's security interest in the Wind Project Assets

13. **Mortgagee Protection**. Any Mortgagee, upon delivery to Owner of notice of its name and address, for so long as its Mortgage is in existence shall be entitled to the following protections which shall be in addition to those granted elsewhere in this Agreement:

13.1 Mortgagee's Right to Possession, Right to Acquire and Right to Assign. A Mortgagee shall have the absolute right: (a) to assign its Mortgage; (b) to enforce its lien and acquire title to all or any portion of the Wind Project Assets by any lawful means; (c) to take possession of and operate all or any portion of the Wind Project Assets and to perform all obligations to be performed by Developer under this Agreement, or to cause a receiver to be appointed to do so; and (d) to acquire all or any portion of the Wind Project Assets by foreclosure or by an assignment in lieu of foreclosure and thereafter without Owner's consent to assign or transfer all or any portion of the Wind Project Assets to a third party. A Mortgagee which assigns or transfers Wind Project Assets to a third party shall notify Owner of the name and address of the Assignee or transferee.

13.2 Opportunity to Cure.

(a) During any period of possession of the Easement Properties by a Mortgagee (or a receiver requested by a Mortgagee) and/or while any foreclosure proceedings instituted by a Mortgagee are pending, the Mortgagee shall pay or cause to be paid the fees and all other monetary charges payable by Developer under this Agreement which have accrued and are unpaid at the commencement of the period and those which accrue thereafter during the period. Following acquisition of all or a portion of the Wind Project Assets by the Mortgagee as a result of either foreclosure or acceptance of an assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale, this Agreement shall continue in full force and effect and the Mortgagee or party acquiring title to Developer's Wind Project Assets shall, as promptly as reasonably possible, commence the cure of all defaults under this Agreement and thereafter diligently process such cure to completion, whereupon Owner's right to terminate this Agreement based upon such defaults shall be deemed waived; provided, however, that the Mortgagee or party acquiring title to Developer's Easement shall not be required to cure those defaults which are not reasonably susceptible of being cured or performed by such party ("non-curable defaults"). Non-curable defaults shall be deemed waived by Owner upon completion of foreclosure proceedings or acquisition of Developer's interest in this Agreement by such party.

(b) Any Mortgagee or other party who acquires Developer's interest in the Wind Project Assets pursuant to foreclosure or assignment in lieu of foreclosure shall not be liable to perform the obligations imposed on Developer by this Agreement incurred or accruing after the party no longer has ownership or possession of the Wind Project Assets.

(c) Neither the bankruptcy nor the insolvency of Developer shall be grounds for terminating this Agreement as long as all Annual Installment Payments and all other monetary charges payable by Developer under this Agreement are paid by the Mortgagee in accordance with the terms of this Agreement.

13.3 New Easement.

(a) If this Agreement terminates because of Developer's default, if the Easements are foreclosed, or if this Agreement is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditor's rights and, within ninety (90) days after such event, Developer or any Mortgagee or Assignee shall have arranged to the reasonable satisfaction of Owner for the payment of all fees or other charges due and payable by Developer as of the date of such event, then Owner shall execute and deliver to Developer or such Mortgagee or Assignee or to a designee of one of these parties, as the case may be, new easements to the Easement Properties which (i) shall be for a term equal to the remainder of the Term before giving effect to such rejection or termination; (ii) shall contain the same covenants, agreements, terms, provisions and limitations as this Agreement (except for any requirements that have been fulfilled by Developer or any Mortgagee or Assignee prior to rejection or termination of this Agreement); and, (iii) shall include that portion of the Wind Project Assets in which Developer or such other Mortgagee or Assignee had an interest on the date of rejection or termination.

(b) After the termination, rejection or disaffirmation of this Agreement and during the period thereafter during which any Mortgagee shall be entitled to enter into new easements for the Easement Properties, Owner will not terminate the rights of any Assignee unless in default under its Assignment.

(c) If more than one Mortgagee makes a written request for new easements pursuant to this provision, the new easements shall be delivered to the Mortgagee requesting such new easements whose Mortgage is prior in lien, and the written request of any other Mortgagee whose lien is subordinate shall be void and of no further force or effect.

(d) The provisions of this Section 13 shall survive the termination, rejection or disaffirmation of this Agreement and shall continue in full force and effect thereafter to the same extent as if this Section 13 were a separate and independent contract made by Owner, Developer and each Mortgagee, and, from the effective date of such termination, rejection or disaffirmation of this Agreement to the date of execution and delivery of such new easements, such Mortgagee may use and enjoy the Easement Properties without hindrance by Owner or any person claiming by, through or under Owner; provided that all of the conditions for the new easements as set forth above are complied with.

13.4 Mortgagee's Consent to Amendment, Termination or Surrender. Notwithstanding any provision of this Agreement to the contrary, the parties agree that so long as there exists an unpaid Mortgagee, this Agreement shall not be modified or amended, and Owner shall not accept a surrender, cancellation or release of all or any part of the Wind Project Assets from Developer, prior to expiration of the Term without the prior written consent of the Mortgagee. This provision is for the express benefit of and shall be enforceable by each Mortgagee as if it were a party named in this Agreement.

13.5 No Merger. There shall be no merger of this Agreement or of the Easements with the fee estate in the Easement Properties by reason of the fact that this Agreement or any interest in the

Easements may be held, directly or indirectly, by or for the account of any person or persons who shall own any interest in the fee estate. No merger shall occur unless and until all persons at the time having an interest in the fee estate in the Easement Properties and all persons (including each Mortgagee) having an interest in this Agreement or in the estate of Owner and Developer shall sign and record a written instrument effecting such merger.

13.6 Liens. On the commencement of this Agreement, the Easement Properties shall be free and clear of all monetary liens other than those expressly approved by Developer. Thereafter, any assignment of this Agreement, mortgage, deed of trust or other monetary lien placed on the Easement Properties by Owner, or permitted by Owner to be placed or to remain on the Easement Properties, shall be subject to this Agreement, to any Assignment or Mortgage then in existence on the Wind Project Assets as permitted by this Agreement, to Developer's right to encumber the Wind Project Assets, and to any and all documents executed or to be executed by Owner in connection with Developer's development of all or any part of the Easement Properties. Owner agrees to cause any monetary liens placed on the Easement Properties by Owner in the future to incorporate the conditions of this Section 13.6.

13.7 Further Amendments. At Developer's request, Owner shall amend this Agreement to include any provision which may reasonably be requested by a proposed Mortgagee; provided, however, that such amendment shall not impair any of Owner's rights under this Agreement or increase the burdens or obligations of Owner under this Agreement. Upon the request of any Mortgagee, Owner shall execute any additional instruments reasonably required to evidence such Mortgagee's rights under this Agreement.

14. **Notices**. All notices or other communications required or permitted by this Agreement 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:

Owner: Keith & Deanna Kessler
Address: 6001 26th Street SW
Glen Ullin, ND 58631
Telephone: (701) 873-5303

Developer: RendField Land Company, Inc.
30 W. Superior St.
Duluth, MN 55802
Attn:
Telephone:
Fax:

Any Assignee or Mortgagee:

The address of the Assignee or Mortgagee as shown in the written notice to Owner of the Assignment or Mortgage.

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.

15. **Miscellaneous**

15.1 Unavoidable Delays. If either party is delayed, hindered in or prevented from performing any act required under this Agreement by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, natural disasters, war, civil strife or other violence, or other cause beyond such party's control, the affected party, upon giving notice to the other party, shall be excused from performing the act (except payment of consideration) for the period of the delay. The affected party shall use its reasonable efforts to avoid or remove the causes of nonperformance and shall continue performance whenever the causes for nonperformance are removed.

15.2 Confidentiality. Owner shall not disclose to others (except Owner's, legal counsel, prospective Lienholders, and successors in interest and financial advisors who recognize and agree to preserve and maintain the confidentiality of such information) the terms of this Agreement or information about Developer's methods, power production, or availability of Wind Project Improvements unless the information is already in the public domain. Owner also agrees not to use such information for Owner's own benefit or permit its use by others for their benefit or to the detriment of Developer.

15.3 Runs With the Owner's Property. The Easements and any rights or obligations in this Agreement shall run with the Owner's Property affected and shall be binding on, and inure to the benefit of, Owner and Developer, Mortgagees, Assignees, and their respective successors and assigns, heirs, personal representatives, tenants, or persons claiming through them.

15.4 Memorandum. Owner and Developer shall execute in recordable form, and Developer at its expense shall then record, a memorandum of this Agreement satisfactory in form and substance to Developer and Owner. Owner consents to the recordation of the interest of any Mortgagee or Assignee in the Easement Properties.

15.5 Entire Agreement/Amendments. This Agreement constitutes the entire agreement between Owner and Developer respecting its subject matter and replaces and supersedes any prior agreements. Any agreement, understanding or representation respecting the subject matter of this Agreement not expressly set forth in this Agreement or a later writing signed by both parties, is null and void. This Agreement and the Easements shall not be modified or amended except in a writing signed by the parties or their respective successors in interest.

The parties understand that following construction of the Wind Project Improvements it will be necessary to substitute **Exhibit C** for **Exhibit B**. The parties agree to cooperate in this substitution of exhibits and in executing any additional agreements or amendments reasonably

needed by the parties for their business purposes so long as they do not adversely affect the rights of either party or violate the terms and spirit of this Agreement.

15.6 Legal Matters. This Agreement shall be governed by and interpreted in accordance with the laws of the State of North Dakota.

15.7 Partial Invalidity. Should any provision of this Agreement be held, in a final and unappealable decision by a court of competent jurisdiction, to be either invalid, void or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect, unimpaired by the holding. Notwithstanding any other provision of this Agreement, the parties agree that in no event shall the Term be for longer periods than the longest periods permitted by applicable law.

15.8 Tax Credits. If under applicable law Developer becomes ineligible for any tax credit, benefit or incentive for alternative energy expenditure established by any local, state or federal government, then, at Developer's option, Owner and Developer shall amend this Agreement or replace it with a different instrument so as to convert Developer's interest in the Easement Properties to a substantially similar interest that makes Developer eligible for such tax credit, benefit or incentive, so long as Owner's interests are not impaired.

15.9 Approvals. No approval required by this Agreement shall be unreasonably withheld (except in instances where this Agreement specifically permits a party to act in its sole discretion), conditioned or delayed. Unless a longer or shorter time is specified, all approvals required of either party shall be given or refused in writing within ten (10) days after receipt of the request for approval. Any delay of a requested approval longer than ten (10) business days shall be deemed an approval.

15.10 Lateral Support. Developer shall have and exercise the right of subjacent and lateral support for Wind Project Improvements on the Easement Properties to whatever extent is necessary for the safe construction, operation and maintenance of Wind Project Improvements. Owner expressly covenants that Owner shall not excavate so near the sides of or underneath the Wind Project Improvements as to undermine or otherwise adversely affect their stability.

15.11 Costs of Future Documentation. Developer or any Mortgagee or Assignee requesting or receiving from Owner additional, new or revised documents under the terms of this Agreement shall pay Owner's reasonable legal fees and other out of pocket expenses related to preparation, review, execution and delivery of the documents requested or received.

15.12 Counterparts. This Agreement may be executed in more than one counterpart, including facsimiles, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have hereby executed this Wind Project Easement Agreement as of the date first written above.

**Owner**:

_____

Name: Keith Kessler

_____

Name: Deanna Kessler

**Developer**:

By: _____

Its:



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**EXHIBIT A**

**Legal Description of Owner's Property**

**EXHIBIT "A"**

**Legal Description of Owner's Property**

The Northwest Quarter (NW¼) 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 (SE¼SE¼) 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 (N½SE¼) of Section 15, Township 141 North, Range 87 West of the 5th P.M., Oliver County, North Dakota

Northeast Quarter (NE¼) of Section 16, Township 141 North, Range 87 West of the 5th P.M., Oliver County, North Dakota

South Half (S½) of Section 16, Township 141 North, Range 87 West, Oliver County, North Dakota

Lots 1 and 2 and East Half of the Northwest Quarter (E½NW¼) of Section 18, Township 141 North, Range 87 West, Oliver County, North Dakota

The East Half (E½) of Section 21, Township 141 North, Range 87 West, Oliver County, North Dakota

SE¼
Sec 22

ALLETE clean energy
SMART. POWERFUL. AHEAD.
30 West Superior Street, Suite 200 | Duluth, Minnesota 55802-2093 | 218.355.3232 | www.alletecleanenergy.com

January 4, 2012

Re: An update on our wind project development in western North Dakota

Dear Keith and Deanna:

Greetings!

ALLETE and its key energy subsidiary companies continue to develop additional wind generation in western North Dakota. As part of our commitment to keep you informed, this letter is the latest update on wind energy development in your area.

Past updates have provided information about Minnesota Power's activities, namely the development of the Bison wind generation facilities northwest of New Salem. Minnesota Power, an operating division of ALLETE Inc. is a power generation, transmission and distribution public utility regulated by the state of Minnesota. In August of this year, a new ALLETE company, ALLETE Clean Energy, was created. ALLETE Clean Energy will develop and provide a wide range of energy services, including wind power generation. ALLETE Clean Energy is a project developer and wholesale energy provider. It will not provide retail electric service in any state.

With the formation of ALLETE Clean Energy, wind options that are held by ALLETE (Rendfield Land Company, Inc.) in an area generally west of the Minnesota Power Bison wind generation facilities and including some of your properties, are in the process of being assigned to ALLETE Clean Energy for construction of wind generation to the west of the Minnesota Power Bison area. Specific actions that have been taken this fall include kicking off the permitting activities for an initial wind project and the 11 mile extension of the 230kV line from the Bison area to ALLETE Clean Energy's project area. This will allow us to be ready to proceed with the project once we are able to secure agreements to sell the power.

Initial contacts with some landowners have already taken place as we move forward with this new potential project. Others may be contacted in the future by ALLETE Clean Energy or Minnesota Power representatives regarding future potential wind generation development. ALLETE and its key energy subsidiary companies continue to plan for development of additional wind generation in western North Dakota. The timing and scope of this development is dependent on many considerations, but we will be sure to provide additional information as it becomes available. You can be assured that although the companies are different, the people representing ALLETE, Minnesota Power and ALLETE Clean Energy share a commitment to integrity, honesty and responsible, fair business practices.

# Application to the North Dakota Public Service Commission for a Certificate of Site Compatibility to Construct the Bison 4 Wind Project

Case # PU-13-127

By

Minnesota Power

May 3, 2013

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Doc 5 5-6-13

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Exhibit 9 Lignite Resources Map

Exhibit 10 Wind Turbine Design Features

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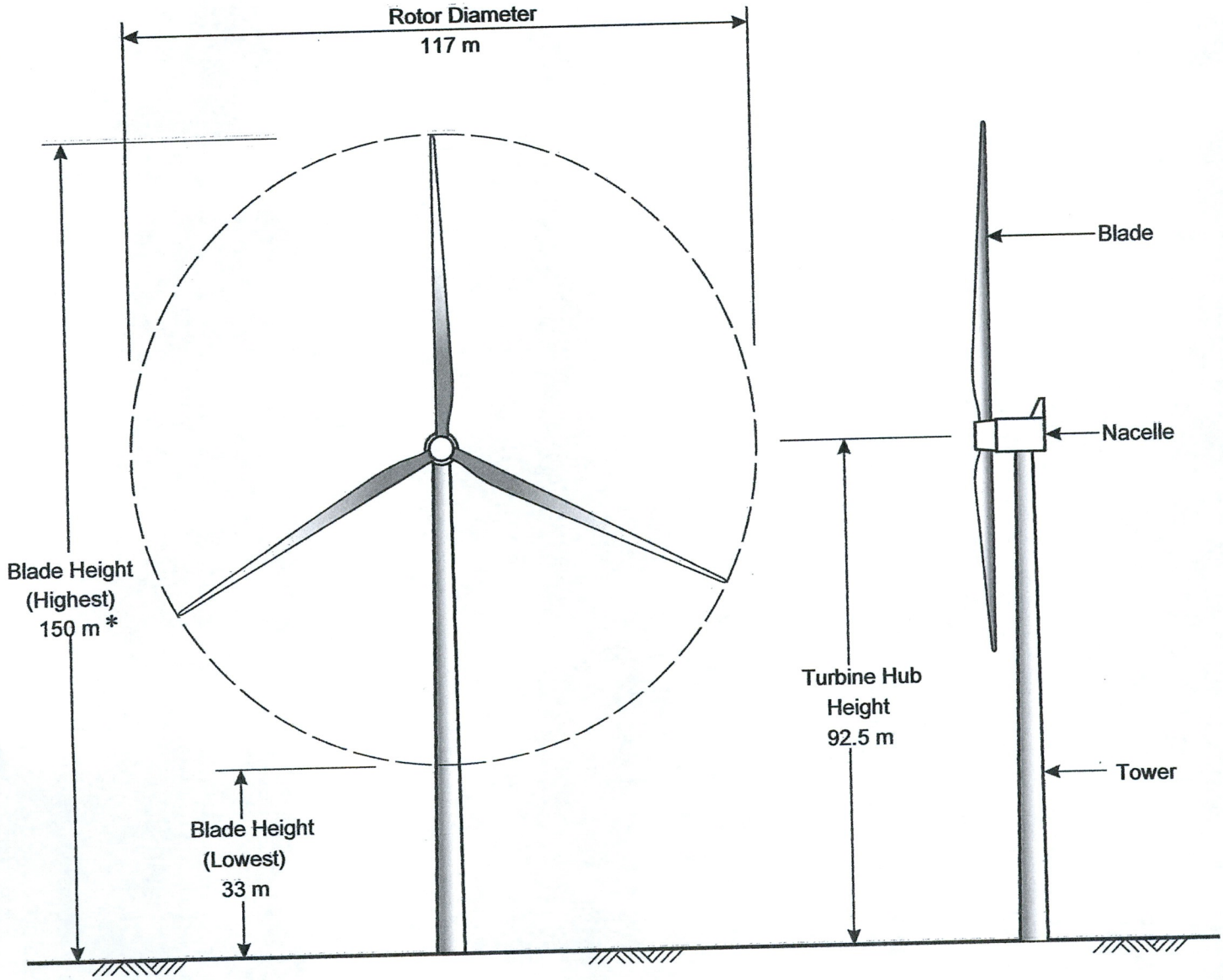


Note: Based on a "Worst Case" Wind Turbine (3.0-3.3 MW)
Total Project Rated Capacity- Up to 210 MW

*Hub Height and Rotor Diameter is for a worst case scenario turbine.
No turbine being considered will be over 150 meters

Exhibit 10

WIND TURBINE DESIGN FEATURES
Minnesota Power
Bison 4 Wind Project



Application
5-6-13 Doc. 5 p. 316

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

**ALLETE, Inc.** **Case No. PU-13-127**
**Bison 4 Wind Project – Mercer Morton Oliver Cty**
**Siting Application**

## CERTIFICATION RELATING TO ORDER PROVISIONS - ENERGY CONVERSION FACILITY SITING

I am Bradley W. Oachs, a representative of Allete, Inc. ("Company") with authority to bind Company to requirements to be set forth by the Commission in its Order and I certify the following:

1. Company understands and agrees that the Certificate of Site Compatibility will be issued by the Commission subject to the conditions and criteria set forth in Chapter 49-22 of the North Dakota Century Code and Chapter 69-06-08 of the North Dakota Administrative Code, and that Company shall be responsible for compliance with this order and conditions and criteria set forth in the applicable laws and rules.

2. Company agrees to hold a preconstruction conference prior to commencement of any construction, which must include a Company representative, its construction supervisor, and a representative of Commission Staff, to ensure that Company fully understands the conditions set forth in the Commission's order.

3. Company agrees to comply with the rules and regulations of all other agencies having jurisdiction over any phase of the proposed energy conversion facility including all city, township, and county zoning regulations.

4. Company understands and agrees that it shall obtain all other necessary licenses and permits, and shall provide copies of all licenses and permits to the Commission prior to construction activity associated with the energy conversion facility that requires said license or permit.

5. Company agrees to inform the Commission and the Commission's third-party construction inspector of its intent to start construction on the energy conversion facility prior to the commencement of construction. Once construction has started, Company shall keep the Commission and the Commission's third-party construction inspector updated of construction activities on a weekly basis.

6. Company understands and agrees that the Certificate of Site Compatibility is subject to suspension or revocation and may, in an appropriate and proper case, be suspended or revoked for failure to comply with the Commission's order, the conditions and criteria of the certificate or subsequent modification, or failure to



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comply with the applicable statutes, rules, regulations, standards, and permits of other state or federal agencies.

7. Company agrees to maintain records that will demonstrate that it has complied with the requirements of the Commission's order and the Certificate of Site Compatibility, and that it will preserve these records for Commission inspection at any reasonable time upon reasonable notice.

8. Company agrees to construct and operate the energy conversion facility in accordance with all applicable safety requirements.

9. Company agrees to construct and operate the energy conversion facility in the manner described in Company's application, in any late filed exhibits, and supplemental materials, (Application). To the extent there are any conflicts or inconsistencies between Company's Application and the provisions in this Certification Relating to Order Provisions, the Certification provisions control.

10. Company agrees to report promptly to the Commission the presence in or near the approved site of any critical habitat of threatened species, endangered species, bald eagles, or golden eagles that Company becomes aware of and which were not previously reported to the Commission.

11. Company understands and agrees that all cultural resource mitigation plans must be submitted to the North Dakota State Historic Preservation Office and approved prior to the start of any fieldwork and construction activity in the affected area.

12. Company understands and agrees that if any cultural resource, paleontological site, archeological site, historical site, or grave site is discovered during construction, it must be marked, preserved and protected from further disturbances until a professional examination can be made by the State Historical Society, a report of such examination is filed with the Commission, and clearance to proceed is given by the Commission.

13. Company understands and agrees that all buried facility crossings of graded roads shall be bored unless the responsible governing agency specifically permits Company to open cut the road.

14. Company understands and agrees that all pre-existing township and county roads and lanes used during construction must be repaired or restored to a condition that is equal to or better than the condition prior to the construction of the energy conversion facility and that will accommodate their previous use, and that areas used as temporary roads or working areas during construction must be restored to their original condition.

15. Company understands and agrees that construction must be suspended when weather conditions are such that construction activities will cause irreparable damage to roads or land, unless adequate protection measures approved by the Commission are taken.

16. Company understands and agrees that where available, at least 12 inches of topsoil over and along trench areas, roadways, tower locations, and locations of associated facilities shall be stripped and shall be segregated from the subsoil and be replaced only after the subsoil is replaced. Any area on which excavated subsoil will be placed must first be stripped of topsoil. After backfilling with subsoil is completed, any excess subsoil must be placed over the excavation area, blending the grade into existing topography.

17. Company understands and agrees that it shall bury all underground collection and feeder lines to a depth of at least 48 inches to the top of the lines.

18. Company understands and agrees that reclamation, fertilization, and reseeding is to be done according to the Natural Resources Conservation Service recommendations, unless otherwise specified by the landowner and approved by the Commission.

19. Company understands and agrees that its obligation for reclamation and maintenance of the approved site will continue throughout the life of the energy conversion facility.

20. Company is aware that North Dakota law requires that all companies that own or operate electric generation of any size for the primary purpose of resale must comply with the standards of the National Electrical Safety Code in effect at the time of construction of the generation facility, and agrees to comply with that requirement.

21. Company agrees to comply with the Tree and Shrub Mitigation Specifications, attached.

22. Company understands and agrees that it shall repair or replace all fences and gates removed or damaged during all phases of construction and operation of the proposed energy conversion facility.

23. Company understands and agrees that it shall repair or replace all drainage tile broken or damaged as a result of construction and operation of the proposed energy conversion facility.

24. Company understands and agrees that it shall work with landowners and residents to mitigate any increase in television and residential radio interference that results from the construction of the energy conversion facility.

25. Company understands and agrees that staging areas or equipment shall not be located on land owned by a person other than Company unless otherwise negotiated with landowners.

26. Company understands and agrees that it shall remove all waste that is a product of construction and operation, restoration, and maintenance of the site, and properly dispose of it on a regular basis.

27. Company agrees that it shall, as soon as practicable upon the completion of the construction of each wind turbine, restore the area affected by the activities to as near as is practicable to the condition as it existed prior to the beginning of construction.

28. Company agrees that it shall provide, if requested, educational material for landowners within the site boundaries about the proposed energy conversion facility and any restriction or danger concerning the proposed energy conversion facility.

29. Company understands and agrees that it shall provide any necessary safety measures for traffic control or to restrict public access to the energy conversion facility.

30. Company understands and agrees that it shall advise the Commission of any extraordinary events which take place at the site of the energy conversion facility, including injuries to any person, the death of any threatened or endangered species, a tower collapse, or a catastrophic turbine failure, within five business days of such event.

31. Company understands and agrees that it shall advise the Commission of the discovery of a large number of dead birds or bats on the site within five business days of such event.

32. Company understands and agrees that it shall implement a procedure for how complaints concerning the proposed energy conversion facility will be handled by Company

33. Company agrees to provide the Commission with engineering design drawings showing surveyed structure and collection substation locations prior to construction.

34. Company understands and agrees that it shall inform the Commission in writing of any plans to modify the energy conversion facility, or of any plans to modify the site plan for the energy conversation facility. Company understands and agrees to obtain written approval from the Commission prior to any modifications to the site plan or the energy conversion facility, associated facilities, and roadway locations. Approval may be granted after notice and opportunity for hearing.

35. Company agrees to provide the Commission with both an electronic and a paper copy of the site approved by the Commission and the facility design specifications for the construction of the energy conversation facility showing the location of the energy conversion facility as built, and will provide this information within 3 months of the completion of the construction. Company also agrees to provide an electronic version of the site approved by the Commission and the facility design specifications for the construction of the energy conversation facility showing the location of the energy conversion facility as built that can be imported into ESRI GIS mapping software within 3 months of the completion of the construction. This electronic map data must be referenced to the North Dakota coordinate system of 1983, North and/or South zones US Survey feet (NAD 83) UTM Zone 13N or 14N feet (NAD 83), or geographic coordinate system (WGS 84) feet. The vertical data must be in the appropriate vertical datum for the coordinate system used. All submissions must specify the datum in which the data was developed.

36. Company is aware that under North Dakota Century Code section 49-02-27 the Commission has rules for decommissioning of wind energy conversion facilities. Company agrees to comply with all decommissioning rules adopted by the Commission.

37. Company understands and agrees that the authorizations granted by the Certificate of Site Compatibility for the energy conversion facility are subject to modification by order of the Commission if deemed necessary to protect further the public or the environment.

38. Company understands and agrees that in the event Company desires to construct, within any site granted by a Certificate of Site Compatibility in this proceeding, an energy conversion facility that was not requested in Company's application in this proceeding, Company shall apply for a Certificate of Site Compatibility for the facility.

39. Company shall notify the Commission, as soon as reasonably possible, if any damage, as defined by North Dakota Century Code Chapter 49-23, occurs to underground facilities during construction conducted under the certificate or permit issued in this proceeding. In the event of any damage to underground facilities, Company shall suspend construction in the vicinity of the damage until compliance with One-Call Excavation Notice System requirements under North Dakota Century

Code Chapter 49-23 has been determined and clearance to proceed has been given by the Commission.

40. The certificate of site compatibility is subject to suspension or revocation and may, after hearing, be suspended or revoked for failure to comply with the Commission's order, requirements of the One-Call Excavation Notice System under North Dakota Century Code Chapter 49-23, the conditions and criteria of the certificate or permit or subsequent modification, or failure to comply with applicable statutes, or rules, regulations, standards, and permits of other state or federal agencies.

Dated this 8 day of August, 2013.

ALLETE, INC.

By Bradley W. Oachs
Bradley W. Oachs

Its Chief Operating Officer

# Sign in Sheet

## PGC: Allete hearing 9/13/13

| Name | Company | Contact info. |
|---|---|---|
| Pat Ward | OAH - ALJ | 701-223-2711 |
| Matt Freudenrich | MN Power | 320 492 7012 |
| Barry Gartner | MN Power | 218-355-3333 |
| Dan McGourtney | MN Power | 218-355-3515 |
| Dan Buckeyer | Oliver Co. Planning + Zoning | 701-220-9064 |
| Darrell Berger | Oliver Co Commissioner | 701-794-3199 |
| Jon Coughlin | MN Power | 218-393-1415 |
| Bill Sawyer | MN Power | 218-355-3580 |
| [illegible] et Strauss | MN Power | 218-355-3109 |
| Todd Sumans | MN Power NCSRCC | 701-426-7820 |
| Keith + Deanna Kessler | Land Owner | 701-873-5303 |
| Marvin + Louise Bickel | Landowner | 701-348-3126 |
| [illegible] Bryant Vande | | 348-33106 |
| April Baumgarten | Hazen Star | 781-891-1639 |
| Teri Schultz | Oliver Co Tax Director | 701-794-3129 |

32 **PU-13-127** Filed: 9/17/2013 Pages: 1
**Hearing attendance sheet of September 13, 2013 formal hearing**

Public Service Commission

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9-13-13

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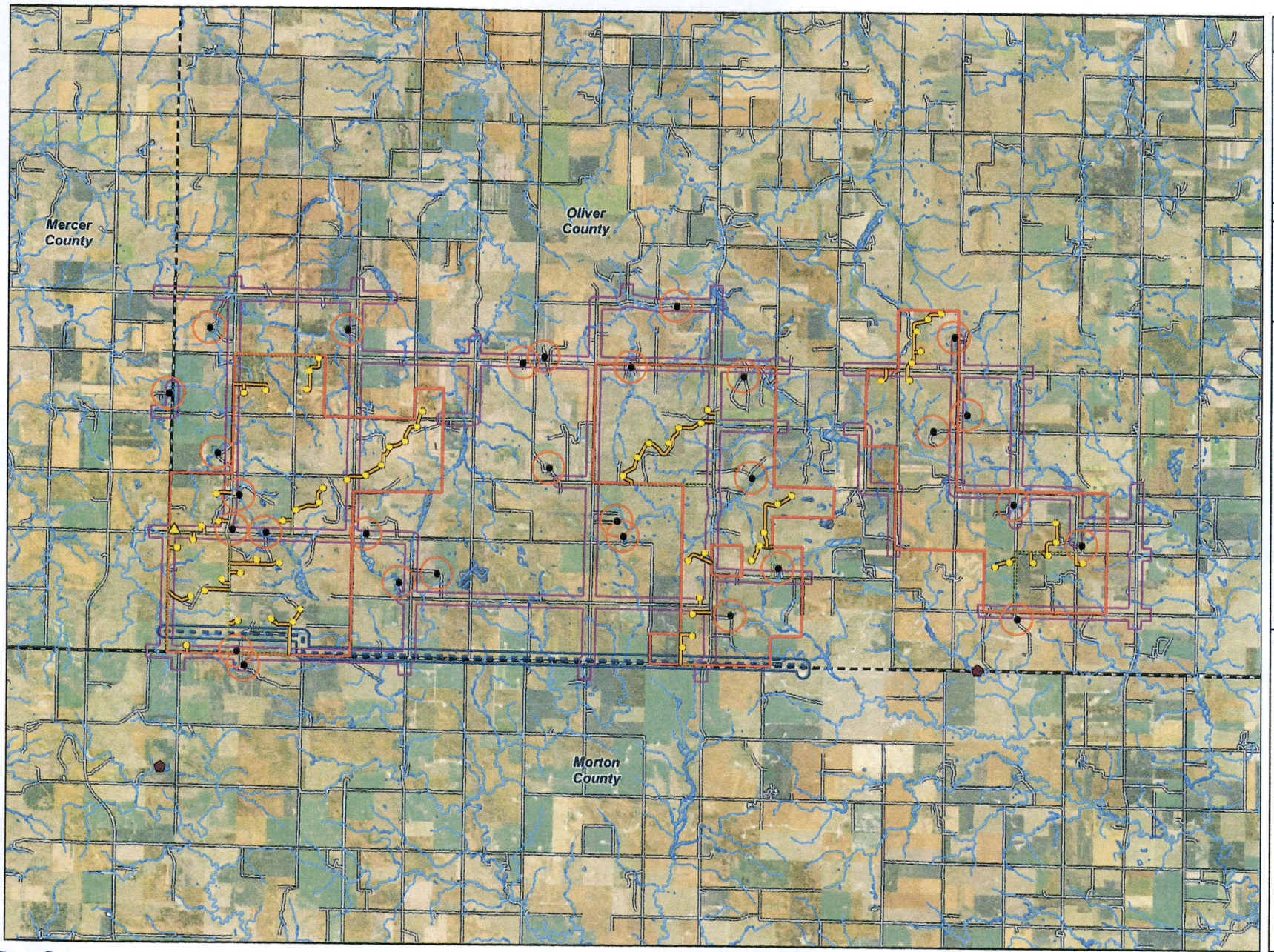





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1 inch = 1.5 miles

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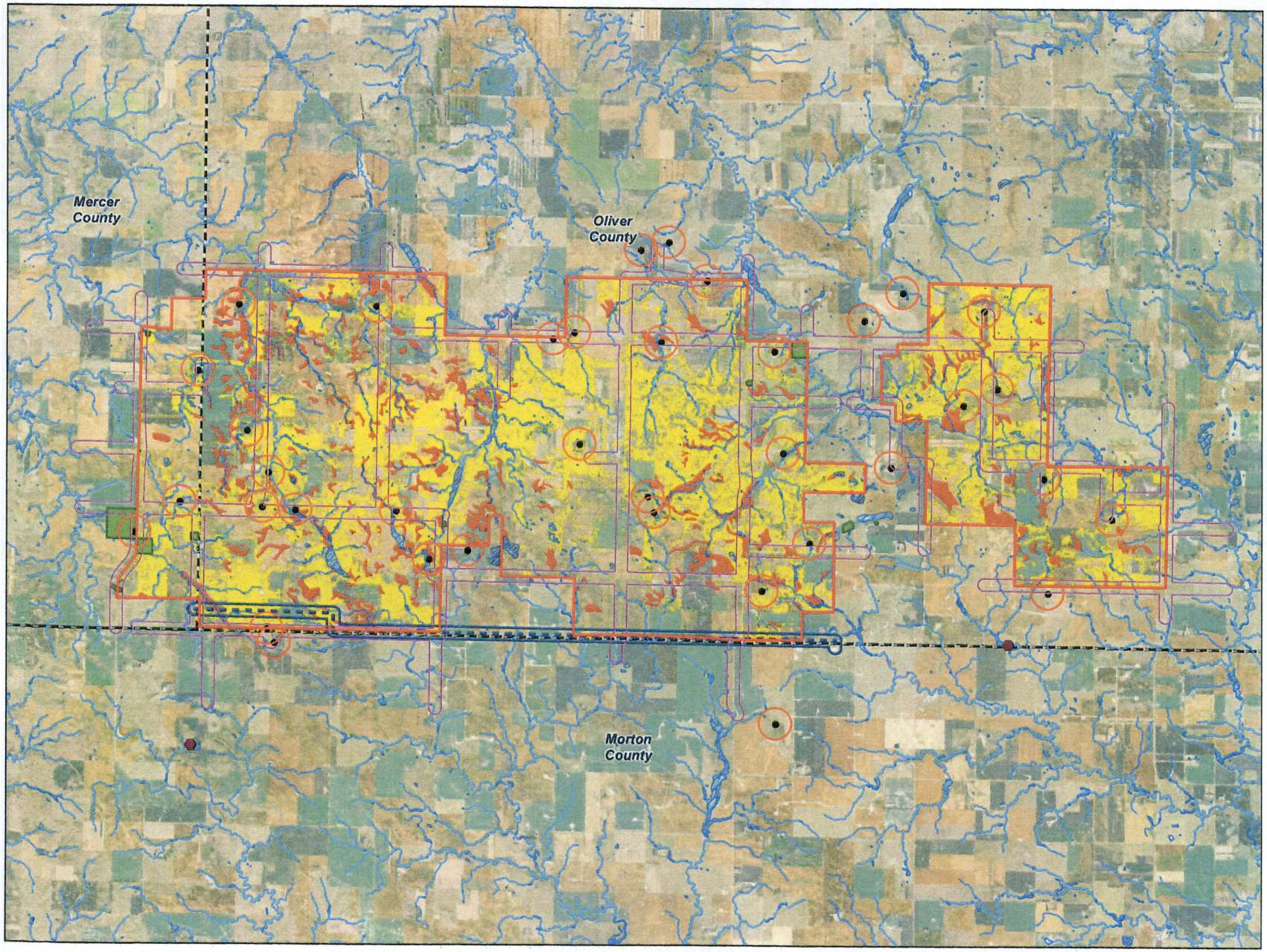
- Preliminary Project Boundary
- Turbine
- MET Tower
- Access Road
- County Road Upgrade
- Occupied Residence
- Threatened or Endangered Species
- 230kV Line
- 1400ft Occupied Dwelling Setback
- 544ft Maintained Road Setback
- 544ft Transmission Line Setback
- NHD Stream
- NWI Wetland
- County Boundary
- Road

**Exhibit 2**
**Exclusion and Avoidance Areas**

**Minnesota Power**
**Bison 4 Wind Project**

**Oliver County, North Dakota**

Public Hearing Exhibit 2







0 0.75 1.5 Miles

1 inch = 1.5 miles

N W E S

- Occupied Residence
- Threatened or Endangered Species
- 230kV Line
- Preliminary Project Boundary
- 1400ft Occupied Dwelling Setback
- 544ft Maintained Road Setback
- 544ft Transmission Line Setback
- NHD Stream
- Cultural Site
- NWI Wetland
- GAP Landcover Praire
- Areas of Prime Farmland
- County Boundary

**Exhibit 4**
**Exclusion and Avoidance Areas**

**Minnesota Power**
**Bison 4 Wind Project**

**Mercer and Oliver Counties, North Dakota**

# STATE OF NORTH DAKOTA
# PUBLIC SERVICE COMMISSION

**ALLETE, Inc.** **Case No. PU-13-127**
**210 MW Bison 4 Wind Project – Oliver County**
**Siting Application**

## FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

**September 25, 2013**

### Appearances

Commissioners Brian P. Kalk, Randy Christmann, and Julie Fedorchak

David R. Moeller, Senior Attorney, Minnesota Power, 30 West Superior Street, Duluth, MN 55802, on behalf of the Applicant.

Mitchell D. Armstrong, Special Assistant Attorney General on behalf of the North Dakota Public Service Commission.

Patrick Ward, Administrative Law Judge pursuant to temporary appointment by the Office of Administrative Hearings, 1701 North Ninth Street, Bismarck, North Dakota 58501-1882, as Procedural Hearing Officer.

### Preliminary Statement

On March 15, 2013, Minnesota Power, an operating division of ALLETE, Inc. (Minnesota Power) submitted a Letter of Intent (LOI) to submit an application for a Certificate of Site Compatibility for an up to 210 MW wind energy conversion facility in Mercer, Morton and Oliver counties of North Dakota. Minnesota Power requested in its LOI that the Commission shorten the one-year waiting period required between filing the LOI and the filing of an application.

On March 27, 2013, the North Dakota Public Service Commission (Commission) shortened the one-year waiting period to one month, and assessed a filing fee of $100,000 due upon filing of an application.

On May 3, 2013, Minnesota Power filed an Application for a Certificate of Site Compatibility (Application) authorizing construction of the up to 210 MW Bison 4 Wind Project (Bison 4) consisting of up to 70 wind turbine generators and associated facilities in Morton and Oliver counties, North Dakota (Hearing Exhibit 1).

On July 10, 2013, the Commission deemed the Application complete conditioned on the filing of final wind turbine locations on or before August 14, 2013, and issued a Notice of Filing and Notice of Hearing, scheduling a public hearing for August 21, 2013, at 1:30 p.m. CDT, at the Oliver County Courthouse, 11 West Main, Center, North Dakota 58530. The Notice identified the following issues to be considered:

1. Will the location, construction and operation of the proposed facilities produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota?

2. Are the proposed facilities compatible with the environmental preservation and the efficient use of resources?

3. Will the proposed facility locations minimize adverse human and environmental impacts while ensuring continued system reliability and integrity, and ensuring that energy needs are met and fulfilled in an orderly and timely fashion?

On August 7, 2013, Minnesota Power submitted a map detailing the proposed final locations for turbines. Minnesota Power also supplemented its Application with additional information on wetland delineation, cultural resources surveys, agency consultation, and voluntary landowner notifications (Hearing Exhibit 2). The proposed final project area and turbine locations are all within Oliver County.

On August 13, 2013, Minnesota Power filed an executed Certification Relating to Order Provisions – Wind Energy Conversion Facility Siting (Hearing Exhibit 3).

On August 21, 2013, the Commission issued a Notice of Rescheduled Hearing, rescheduling the public hearing until September 13, 2013 at 9:00 a.m. CDT at the Oliver County Courthouse, 11 West Main, Center, North Dakota 58530. The Notice did not modify the issues to be considered.

On September 13, 2013, the public hearing was held as rescheduled. Having allowed all interested persons an opportunity to be heard, and having heard, reviewed and considered all testimony and evidence presented, the Commission makes the following:

## Findings of Fact

1. Minnesota Power, an operating division of ALLETE, Inc., is a Minnesota public utility as defined under Minn. Stat. §216B.02, subd. 4.

2. ALLETE, Inc., a Minnesota Corporation, is registered to conduct business in the State of North Dakota, as evidenced by a Certificate of Good Standing issued by the North Dakota Secretary of State on March 6, 2013 filed in Case No. PU-09-696.

3. Minnesota Power proposes to construct and own a wind energy facility (the Bison 4 Wind Project) to be located in Oliver County, North Dakota, approximately 10 to 12 miles north and northwest of the city of New Salem, North Dakota. The project area consists of approximately 22,629 acres. The wind turbines will be placed throughout the project site.

4. Associated facilities to be constructed within the project area include access roads, underground electrical collection and feeder lines, additions to an existing electrical substation, meteorological towers, and operations and maintenance buildings.

5. North Dakota Century Code § 49-22-16 provides that no energy conversion facility site shall be designated if it violates any county or city land use, zoning, building rules, regulations or ordinances. Oliver County requires zoning permits for construction, which Minnesota Power has obtained.

## Project Design

6. The project will have a nameplate (gross) generating capacity of 204.8 MW, consisting of 64 3.2 MW wind turbines and associated facilities. Projected average annual energy output is estimated at 835,000 MWh per year.

7. Minnesota Power plans to use Siemens 3.2 MW turbines. These are utility-grade wind turbines with a nominal nameplate rating of 3,200 kW. Each turbine will have a 92.5-meter (303.5 feet) hub height and a 113 meter (370.7 feet) rotor diameter.

8. Each turbine begins operating at wind speeds of 6.7 miles per hour (mph), and reaches its rated capacity (3.2 MW) at a wind speed of 29 mph. Each turbine is designed to operate at wind speeds of up to 56 mph and can withstand wind speeds of 95 mph.

9. Each tower will be secured by a concrete foundation that can vary in design depending on the soil conditions. A typical foundation extends nine to eleven feet below grade where it spreads to a final diameter of 60 to 65 feet at the base. Turbine lighting will be limited to warning lights required by the Federal Aviation Administration. A control panel inside the base of each turbine tower houses communication and electronic circuitry. Each turbine is equipped with a wind speed and direction sensor that communicates to the turbine control system to signal when sufficient winds are present for operation. The turbine features variable-speed control and independent blade pitch to assure aerodynamic efficiency. Electricity generated by each turbine is brought to a pad-mounted transformer where the voltage is stepped up to a power collection line voltage of 34.5 kV. This electricity is collected by sets of underground power collection lines.

10. Bison 4 will interconnect with substations that have already been permitted by the Commission. The substations used will be the Tri-County Substation (Case No. PU-11-620) and an expansion of Minnesota Power's existing Bison Substation.

11. The 34.5 kV collector system transmits power to the project collector substations. At the project substations, the power will be transformed to 230 kV and transmitted via an overhead 230 kV transmission line, interconnecting with the transmission grid at the existing Square Butte Substation. Electrical energy is converted from AC to DC via a DC converter station within the Square Butte Substation. Electrical energy from the Bison 4 Wind Project will be transmitted to customers via the existing Minnesota Power DC Line which extends from the Square Butte Substation to Minnesota Power's Arrowhead Substation located near Duluth, Minnesota and on the existing AC system as available.

12. Wind data was collected from three meteorological towers constructed in the project site area. Minnesota Power expects the project will have annual average wind speeds of 8 mps (equivalent to 17.8 mph) or higher, comparable to National Renewable Energy Laboratory wind power class ratings of 5 and 6, indicating an excellent to outstanding wind resource.

13. Construction of the Bison 4 Wind Project is expected to take approximately 16 months, at a total estimated construction cost of $345 million including associated substation and transmission facilities.

14. Minnesota Power states it has secured all wind options from landowners necessary for the construction and operations of the Bison 4 Wind Project.

15. Minnesota Power anticipates commencing construction in fall 2013, and commercial operation to begin in early 2015.

16. Safety factors will be incorporated into the wind turbines. Each turbine will be equipped with a Supervisory Control and Data Acquisitions (SCADA) communication technology to control and monitor the turbine. In addition, each turbine is equipped with a lightning protection system and is grounded and shielded to protect against lightning.

17. Construction and operation of the Bison 4 Wind Project will conform to requirements of the National Electric Safety Code.

Siting Criteria

18. North Dakota Administrative Code Chapter 69-06-08 sets forth certain criteria to guide the Commission in evaluating the suitability of granting an application for the certificate of site compatibility. The criteria set forth in North Dakota Administrative Code Section 69-06-08-01 are classified as Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria. With the exception of prime and unique farm

land, an energy conversion facility must not be sited within an Exclusion Area. The exception for prime and unique farm land is if the Commission finds that the prime farm and unique farm land that will be removed from use for the life of the facility is of such small acreage as to be of negligible impact on agricultural production, then such exclusion shall not apply. An energy conversion facility must not be sited within an Avoidance Area unless the applicant shows that under the circumstances there is no reasonable alternative. In determining whether an Avoidance Area should be designated for a facility, the Commission may consider, among other things, the proposed management of adverse impacts; the orderly siting of facilities; system reliability and integrity; the efficient use of resources, and alternate sites. In accordance with the Commission's Selection Criteria, an energy conversion facility shall be approved only if it is demonstrated that no significant adverse impacts will result from the location, construction, and operation of the facility. In accordance with the Commission's Policy Criteria, preference may be given to an applicant demonstrating certain benefits of the energy conversion facility.

19. With the exception of prime farmland and possible cultural resource sites, no exclusion areas have been identified within the project area. Exhibit 6 of the Application (Hearing Exhibit 1) labeled Prime Farmland Soil Distribution Map shows that approximately 8.6 percent of the site is prime farmland soils, most of it located in the southeast and northeast portions of the site. The final layout will site only a limited number of turbines and facilities in prime farmlands. Unique and prime farmland to be disturbed by this energy conversion facility is of such small acreage as to be of negligible impact on agricultural production.

20. Up to 133 acres of agricultural production will be impacted due to turbine placement, access roads, the operations and maintenance facility and project substation, which constitutes less than 0.5 percent of the Project area. Wind turbine configuration will not result in significant impacts to agricultural production. No impacts on the agricultural quality of the crop land are anticipated. If compaction of soils occurs during construction, Minnesota Power will work with landowners to alleviate the compaction.

21. Minnesota Power submitted evidence to demonstrate that the proposed energy conversion facility would not have significant impact on the Selection Criteria set forth in North Dakota Administrative Code section 69-06-08-01(3).

22. Minnesota Power submitted evidence to demonstrate its commitment to maximize the benefits of the proposed energy conversion facility as far as is possible so as to meet the Policy Criteria set forth in North Dakota Administrative Code Section 69-06-08-01(4).

23. No significant adverse impact is foreseen on the ability of the affected area to provide community services, such as housing, health care, schools, police and fire protection, water and sewer, solid waste management, transportation, or public safety. The proposed project is expected to be of economic benefit to the affected area.

24. The only Avoidance Areas identified within the project area are cultural resource sites, woodlands and wetlands. No turbines will be placed within these areas.

25. According to North Dakota Geological Survey data, no viable economic lignite coal reserves have been identified within the project area.

Cultural Resources

26. The Bison 4 Wind Project will avoid all known archaeological sites.

27. On July 23, 2013 the North Dakota State Historic Preservation Office issued a letter concurring with the conclusion of the Class III Cultural Resource Inventory for the Bison 4 Wind Project by Beaver Creek Archaeology, regarding the "No Significant Sites Affected" and "No Historic Properties Affected" determinations (Hearing Exhibit 2).

Wetlands and Wildlife

28. Minnesota Power has consulted with numerous local, state, and federal agencies, which are identified in Appendix C of the Application (Hearing Exhibit 1), and Appendix B of the August 7, 2013 Supplement (Hearing Exhibit 2). Among the agencies providing input were the North Dakota Game and Fish Department, which has not objected to construction of the project.

29. The North Dakota Game and Fish Department indicated its primary concern is with disturbance of native prairie and wetlands. Minnesota Power plans to mitigate any impacts. The disturbance of native prairie and wetlands will be minimal.

30. Minnesota Power met with the United States Fish and Wildlife Service (USFWS) in April 2013. As noted in Section 10.11.29 of the Application, the USFWS stated in a phone conservation that there were no USFWS easements within the project footprint and that USFWS would not be sending any formal comments in response to the project notification.

31. On previous Bison wind projects concerns of the USFWS have focused on migratory birds, wetlands, native grasslands, and threatened and endangered species. Minnesota Power will implement measures to avoid and minimize effects to wildlife at the proposed site by locating facilities away from habitat and wetlands when possible.

32. Minnesota Power is developing an Avian and Bat Protection Plan (ABPP) that will be implemented during construction and for post-construction monitoring. The ABPP will include protocols for field technicians to report and document avian mortalities during routine maintenance operations.

lines due to Minnesota Power's representation at the September 13, 2013 hearing about increased costs and that safety will not be compromised. The Commission accepts the following modifications proposed to the Tree and Shrub Mitigation Specifications attached to the certification:

a. Paragraph 2: In windbreaks, shelterbelts and other planted areas trees that are one inch diameter or greater at breast height or shrubs anticipated to be cleared must be inventoried for replacement.

b. Paragraph 3: In native growth areas trees anticipated to be cleared that are 3 inch diameter at breast height or greater must be inventoried for replacement.

From the foregoing Findings of Fact, the Commission now makes its:

**Conclusions of Law**

1. The Commission has jurisdiction over this proceeding under North Dakota Century Code Chapter 49-22.

2. The energy conversion facility proposed by Minnesota Power is an energy conversion facility site as defined in North Dakota Century Code section 49-22-03(11).

3. The Application submitted by Minnesota Power meets the site evaluation criteria required by North Dakota Century Code chapter 49-22.

4. The location, construction, and operation of the proposed energy conversion facility will produce only minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.

5. The proposed energy conversion facility is compatible with environmental preservation and the efficient use of resources.

6. The proposed energy conversion facility will minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion.

7. The Commission has jurisdiction to ensure compliance with National Electric Safety Code standards in the construction and operation of the proposed energy conversion facility.

8. The proposed project is of such design, location and purpose that it will produce minimal adverse effects.

From the foregoing Findings of Fact and Conclusions of Law, the Commission now make its:

## Order

The Commission orders:

1. Certificate of Site Compatibility for an Energy Conversion Facility No. 34 is issued to Minnesota Power for the construction, operation, and maintenance of a wind energy facility known as Bison 4 Wind Project in accordance with this Order.

2. The site, as proposed in the Application, is located in Oliver county approximately 12 miles north and northwest of New Salem, North Dakota, and is designated as the site for construction of the energy conversion facility.

3. Minnesota Power is authorized to construct up to 64 wind turbines totaling approximately 204.8 MW of total generating capacity in proposed and alternate locations, along with electric collection and communication lines, a project substation, operations and maintenance buildings, meteorological towers, access roads and other associated facilities identified in the application and at the September 13, 2013 public hearing.

4. The August 13, 2013, Certification Relating to Order Provisions – Wind Energy Conversion Facility Siting (Exhibit 3), except as modified in accordance with Findings of Fact paragraph 39 above, is incorporated by reference and attached to this Order.

**PUBLIC SERVICE COMMISSION**

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| **Randy Christmann**<br>**Commissioner** | **Brian P. Kalk**<br>**Chairman** | **Julie Fedorchak**<br>**Commissioner** |

# WIND PROJECT EASEMENT AGREEMENT

This Wind Project Easement Agreement is made as of 11-8-13 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 owners of the real property described on attached **Exhibit A** ("Owner's Property"), and Minnesota Power, a division of ALLETE, Inc., a Minnesota corporation, ("Developer").

1. **Purpose.** This Agreement establishes the rights of the parties and their duties to each other with regard to the financing, construction, operation, repair, maintenance, replacement, and removal of all Wind Project Improvements (as defined below) in connection with Developer's Wind Project, whether located on or off Owner's Property.

2. **Definitions.** Capitalized terms used in this Agreement have the meaning given them in the text of the Agreement or in this definitions section.

"Access Rights" means the right of unobstructed ingress and egress to and from the Wind Project Improvements by Developer, its agents, contractors, successors and assigns.

"Collection Facilities" means the underground and above ground electrical collection and telecommunications lines, splice boxes, and all other devices and equipment used to connect the Turbines to electrical collection lines connected to the power grid and to the Wind Project's Met Towers and operations and maintenance facilities.

"Commercial Operation Date" means the date which is identified by written notice from Developer to owner as the commercial operation date of the Wind Project.

"Easements" means the Turbine Site Easement, Access Easement, Collection Easement, Construction Easement, Wind Non-Obstruction Easement, Noise Easement, Overhand Easement, Met Tower Site Easement and Met Tower Access Easement.

"Easement Properties" means the Turbine Sites, the Access Easement Property, Collection Easement Property, Construction Easement Property, Noise Easement Property, Overhang Easement Property, Met Tower Sites, and Met Tower Access Easement Property, all as described in Section 6 of this Agreement.

"Effective Date" means the date when all conditions precedent set forth in Section 5 of this Agreement are satisfied or waived, and all other documents required by Developer have been signed and delivered by Owner.

"Environmental Laws" shall mean any federal, state or local law, statute, code enactment, ordinance, rule, regulation, permit, consent, approval, authorization, license, judgment, order, writ, decree, injunction, common law (including without limitation the common law respecting nuisance and tortious liability), or other requirement having the force and effect of law or regulation, relating to the protection of human health and safety, occupational health and safety,



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the environment, or natural resources and wildlife, including, without limitation (i) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980(CERCLA), (ii) the Solid Waste Disposal Act, (iii) the Resource Conservation and Recovery Act (RCRA), (iv) the Toxic Substances Control Act (TSCA), (v) the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), (vi) the Clean Water Act, (vii) the Clean Air Act,, (viii) the Occupational Safety and Health Act (OSHA), (ix) the Safe Drinking Water Act, and (x) the Minnesota Environmental Response and Liability Act (MERLA), all as amended and in effect from time to time.

"**Exhibit B**" means the preliminary Easement Plan attached to this Agreement at the time it is signed showing the approximate planned location of all Wind Project Improvements and Easements located on the Owner's Property.

"**Exhibit C**" means the final as-built Easement Plan to be attached to this Agreement by Developer as a replacement for **Exhibit B** after construction of the Wind Project Improvements showing the exact locations of all Wind Project Improvements as constructed on Owner's Property and all Easements. Developer shall deliver **Exhibit C** to Owner within one hundred eighty (180) days after completion of construction of the Wind Project Improvements and after **Exhibit C** is delivered to Owner, any references in this Agreement that refer to **Exhibit B** shall be deemed to refer to **Exhibit C**.

"Hazardous Substance" means any substance which is defined as a hazardous substance, hazardous material, hazardous waste, pollutant, contaminant, or extremely or imminently hazardous substance or material under any Environmental Law.

"Met Tower" means a tower used primarily to gather and transmit meteorological data relating to the Wind Project, and includes the tower's foundations, meteorological data acquisition equipment, power source, underground data, and electrical collection lines.

"Met Tower Site" means each of those portions of Owner's Property on which a Met Tower is located. Met Tower Sites are identified and located as shown on **Exhibit B**, subject to final location determination in **Exhibit C**.

"Pre-Construction Activities" means any activities that Developer shall perform on Owner's Property before the Effective Date, which shall include but not be limited to soil borings, environmental assessments, micrositing and surveying.

"Turbine" means a wind turbine generator used to convert wind energy to electrical energy together with the foundation and tower on which it is mounted, as well as a pad mounted transformer, batteries and other devices for storage of electrical energy serving the wind turbine generator located on the Turbine Site.

"Turbine Site" means each of those portions of Owner's Property on which a Turbine is located. Turbine Sites are identified and located as shown on **Exhibit B**, subject to final location determination in **Exhibit C**.



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"Wind Energy Purposes" means converting wind energy into electrical energy, collecting, storing, and transmitting that electrical energy, and all related development activities that Developer reasonably determines appropriate, including, without limitation, the right to study wind speed and feasibility of wind energy conversion on the Easement Properties; to construct, operate and maintain Turbines and Collection Facilities; and to use the Access Rights.

"Wind Project" means Developer's wind energy project located in Morton, Mercer, and Oliver Counties in North Dakota and includes all Wind Project Improvements whether located on or off Owner's Property.

"Wind Project Improvements" means the Turbines, Collection Facilities, Met Towers, access roads, entrances, fences and gates, drainage systems, signs, information kiosk, operations and maintenance building, and all other structures, rights and facilities used in the construction, operation and maintenance of the Wind Project.

3. **Pre-Construction Activities.** Owner acknowledges that prior to commencing construction of the Wind Project, Developer may need to access Owner's Property to conduct Pre-Construction Activities and Owner hereby grants Developer access to Owner's Property for such purposes.

4. **Term.** The term of this Agreement shall begin on the date first written above and terminate concurrently with the Easements. The Term of the Easements ("Term") shall begin on the Effective Date and end on November 30, 2064 unless terminated as provided in this Agreement. If, within five (5) years of the date hereof, the Developer has not initiated construction of Wind Project Improvements on the Easement Properties, Owner may, upon notice to Developer, immediately terminate this Agreement; unless such failure to initiate construction of Wind Project Improvements is caused by unavoidable delays in obtaining the permits described in Section 5.5 (provided that Developer promptly commences construction after receipt of such permits).

5. **Conditions Precedent.** The Easements shall be of no force and effect until Developer is reasonably satisfied all of the following have occurred, or been waived by Developer. If any condition precedent is not satisfied or waived by Developer, Developer may terminate this Agreement upon notice to Owner and, in such event, Developer's sole obligation hereunder shall be to restore Owner's Property to substantially its condition as before Developer's occupancy.

5.1 Environmental Conditions. Receipt by Developer of environmental consultants' reports confirming there are no environmental conditions on the Easement Properties that would interfere with the Wind Project Improvements or cause Developer to incur environmental liability.

5.2 Cultural Properties. Receipt by Developer of reports confirming there are no traditional cultural properties, historic sites, or antiquities of state or national significance on the Easement Properties that would interfere with the Wind Project Improvements.

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5.3 Soil Tests. Receipt of soil test results indicating that the Easement Properties are adequate to install Turbine foundations.

5.4 Wind Analysis. Receipt of reports from professional engineers and meteorologists that each Turbine on the Easement Properties shall produce an adequate amount of wind energy as determined by Developer.

5.5 Permits. Receipt by Developer of all permits required for construction and operation of the Wind Project Improvements comprising the Wind Project, whether located on or off the Owner's Property.

5.6 Title. Approval by Developer of Owner's title to the Easement Properties based on title insurance commitments or title opinions obtained by Developer at its expense.

5.7 Subordination. Receipt by Developer from third parties, such as Lienholders and tenants of all subordination, non-disturbance and other agreements necessary as reasonably determined by Developer to assure Developer's right to undisturbed use and enjoyment of the Easement Properties according to the terms of this Agreement.

5.8 Adjoining Easements. Receipt by Developer of easements from adjoining property owners as reasonably deemed necessary by Developer to permit construction of the Wind Project.

5.9 Turbine Layout and Site Suitability. Receipt by Developer of analysis by a recognized wind resource analysis firm that the turbine selected for project is suitable for the site and that energy output projections from preliminary turbine layout support project economics.

6. **Grant of Easements.** Owner grants to Developer the following easements (collectively, "Easements"). Each of the Easements granted is irrevocable and for the exclusive use and benefit of Developer, its agents, and contractors unless otherwise specified in this Agreement. The Easements are granted subject to Owner's retained right to use the Easement Properties for agricultural uses that do not and will not interfere, in Developer's reasonable determination under the circumstances, with the Wind Project Improvements, Developer's operations, or the enjoyment of the rights granted to Developer in this Agreement. From and after the Effective Date, Developer shall pay Owner fair market value for actual crop loss and damage resulting from pre-construction, construction and operation and maintenance activities associated with Wind Project Improvements. 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.

6.1 Turbine Site Easement. Owner grants Developer an easement to construct, operate, replace, relocate, remove, and maintain a Turbine, together with associated roads and parking

areas on each Turbine Site as shown on **Exhibit B**. This easement is referred to as the "Turbine Site Easement."

6.2 Access Easement. Owner grants Developer an easement on those portions of Owner's Property as shown on **Exhibit B** for unobstructed vehicular and pedestrian ingress to and egress from the Wind Project Improvements, whether located on or off Owner's Property. This easement is referred to as the "Access Easement" and the property subject to the burden of this easement is referred to as the "Access Easement Property." Developer shall have the right to travel over, across and along the Access Easement Property by means of existing roads and lanes, and by roads Developer or Owner may construct or improve from time to time on, over, and across the Access Easement Property.

Owner reserves the right to use all roads on the Access Easement Property provided, however, that Owner shall not and shall not permit others to obstruct or damage the roads or in any other way interfere with Developer's rights under this Access Easement. If all or a part of the Access Easement Property constitutes a part of the width of a larger access easement straddling a property line between Owner's Property and the abutting property of an adjoining property owner, then Owner and Developer hereby grant such adjoining property owner an easement over such portion of the Access Easement Property for ingress and egress to the adjoining property for the conduct of farming activities on the adjoining property.

6.3 Collection Easement. Owner grants Developer an easement for the construction, operation, maintenance, replacement, relocation or removal of Collection Facilities on and under those portions of the Owner's Property as shown on **Exhibit B**. This easement is referred to as the "Collection Easement" and the property subject to the burden of this easement is referred to as the "Collection Easement Property."

6.4 Construction Easement. Owner grants Developer an easement for purposes of constructing, maintaining, repairing, replacing, and removing all or any part or element of the Wind Project Improvements. This easement is referred to as the "Construction Easement" and the property subject to the burden of this easement is referred to as the "Construction Easement Property." The Construction Easement Property is generally shown on **Exhibit B**. Developer may exercise its right to use all or any part of the Construction Easement Property as and when Developer deems it necessary or advisable to do so to perform the activities for which this Construction Easement is granted. In exercising its rights under this Construction Easement, Developer agrees to minimize interference with the necessary movement of Owner's livestock across the Owner's Property. After each use of the Construction Easement, Developer to the extent reasonably possible shall restore the Construction Easement Property to the condition it was in before Developer's use.

When installing, maintaining or removing the nacelle and rotor from any Turbine, this Construction Easement also shall permit the following: (a) (for the purpose of securing tag lines) travel on foot or in a pickup truck, SUV, small forklift or other similar vehicles onto Owner's Property up to seven hundred (700) feet in any direction from the center of the Access Easement Property; and (b) an erection crane to be driven on Owner's Property.

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6.5 Wind Non-Obstruction Easement. 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. This easement is referred to as the "Wind Non-Obstruction Easement" and the property subject to the burden of this easement is referred to as the "Wind Non-Obstruction Easement Property." 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 ("Interference"). Owner reserves the right to erect structures on Owner's Property in compliance with all applicable laws and ordinances except as specifically limited in this Agreement. Owner must consult with and obtain Developer's prior written approval as to the location of all structures greater than forty (40) feet in height located one thousand (1000) feet or less from any Turbine or Met Tower whether or not located on the Wind Project. Approval shall be based on whether, in Developer's sole judgment, informed by appropriate professional engineering and meteorological opinions, the proposed structures at the proposed location are likely to cause Interference.

This Wind Non-Obstruction Easement shall not be interpreted to prevent Owner from granting oil and gas exploration or production rights on Owner's Property, however no drilling rigs or other structures shall be located within three hundred (300) feet of any Turbine or within two hundred twenty-five (225) feet of any Met Tower except with Developer's prior written consent. Owner shall notify Developer as soon as Owner knows of oil and gas exploration or production plans. To the extent it does not interfere with the proposed oil or gas exploration or production, Owner shall cooperate with Developer in the exercise of Owner's oil and gas rights to minimize Interference. In the event any oil and gas related activities are commenced on Owner's Property, Owner agrees not to object to an action by Developer against a third party to reasonably protect Developer's interests hereunder. In turn, Developer agrees not to interfere with Owner's right to surface damages from oil and gas operations, exploration, drilling or granting of pipeline easements, as long as any compensation that Owner may receive shall not diminish or adversely affect any compensation due to Developer for the Wind Project Improvements.

6.6 Noise Easement. Owner grants Developer an easement for the right and privilege to generate and maintain audible noise on and above the Owner's Property at any or all times of the day or night. Developer shall limit noise levels generated by the Wind Project Improvements to less than 50 dBA as measured within 100 feet of existing occupied dwellings. This easement is referred to as the "Noise Easement" and the property subject to the burden of this easement is referred to as the "Noise Easement Property."

6.7 Overhang Easement. Owner grants Developer an easement for the right and privilege to permit the rotors of Turbines located on adjacent properties to overhang a portion of the Owner's Property identified and shown on **Exhibit B** (the "Overhang Easement Property") by no more than 175 feet at a height of at least 75 feet above the ground ("Overhang Easement"). Owner shall not interfere with the operation of Turbine rotors that overhang the Overhang Easement Property.

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6.8 Met Tower Site Easement. Owner grants Developer an easement to construct, operate, replace, relocate, remove, and maintain a Met Tower and Collection Facilities on each Met Tower Site as shown on **Exhibit B**. This easement is referred to as the "Met Tower Site Easement."

6.9 Met Tower Access Easement. Owner grants Developer an easement for vehicular and pedestrian ingress and egress to and from each Met Tower ("Met Tower Access Easement") as shown on **Exhibit B** ("Met Tower Access Easement Property"). This Met Tower Access Easement is an extension of the Access Easement.

7. **Easement Purchase Price and Grant of "Most Favored Nation" Status.** Developer shall pay Owner, as consideration for this Agreement, as follows:

Upon execution hereof, a one-time signing bonus of $2,500.

After the Commercial Operation Date, as follows:

- $5,000' per year per megawatt of manufacturer Turbine name plate capacity, increasing annually at the rate of two percent (2%) starting with the second year of commercial operation;
- $2,000 per Met Tower per year; and
- $200 per acre per year for every acre encumbered by the Wind Project Improvements as shown on **Exhibit B** (collectively, the "Annual Installment Payments").

The first Annual Installment Payment shall be paid within fifteen (15) days of the Commercial Operation Date (the "Payment Date"). Subsequent Annual Installment Payments will be made on or before the anniversary of the Payment Date of each year during the remaining term.

If, within 8 months of the date hereof, Developer enters into an easement agreement for wind development purposes with another landowner within a 10 mile radius of the Easement Properties, which such easement agreement includes higher Annual Installment Payments, then this Wind Project Easement Agreement will be amended to reflect such higher payments.

8. **Taxes.** Developer shall pay any increase in the real property taxes on Easement Properties that is directly attributable to the installation of Wind Project Improvements or to a reclassification of the Easement Properties because of creation of this Agreement. If the Wind Project Improvements are subject to real property taxes, Developer shall request that the Wind Project Improvements be separately assessed and that taxing authorities bill Developer directly for taxes attributable to the Wind Project Improvements. Developer shall not be liable for taxes attributable to facilities installed by Owner or others on the Easement Properties, to the underlying value of the Easement Properties themselves, or for any increase due to any other cause. Developer agrees to reimburse Owner for any taxes paid by Owner that are properly payable by Developer under the terms of this Agreement. To receive reimbursement, Owner must submit any real property tax bill to Developer for reimbursement within a reasonable time after Owner receives the bill from a taxing authority. The parties agree to fully cooperate to

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obtain any available tax refunds or tax abatements. If at any time, Developer seeks to dispute any real property taxes assessed against the Wind Project Improvements or attributable to the installation of the Wind Project Improvements and/or relating to the reclassification of the Easement Properties because of this Agreement (collectively "Assessments"), Developer may, at Developer's option, bring the appropriate proceedings (as determined by Developer in its sole and absolute discretion), in Owner's name, Developer's name, or the names of Owner and Developer for purposes of challenging such Assessment for any year(s) during the Term and any renewals or extensions of the Term. Owner hereby gives Developer the necessary authority to challenge any such Assessments on Owner's behalf, to produce information and documents (including this Agreement) as may be necessary during the course of such Assessment proceedings, and agrees to cooperate with Developer with respect to such Assessment proceedings.

## 9. Developer's Duties and Representations

9.1 Care and Appearance. Developer shall at all times maintain the Wind Project Improvements in a neat, clean and presentable condition. Developer shall not willfully destroy Owner's Property and shall keep the Turbine Sites, Met Tower Sites, Access, Collection and Construction Easement Properties clean and free of debris created by Developer, its contractors, or others brought on to the Owner's Property by Developer. Developer shall be responsible for weed control on those portions of the Turbine Sites, Met Tower Sites, and Access Easement Properties not actively farmed by Owner or their tenant(s).

9.2 Fences and Gates. Developer shall consult with Owner and obtain Owner's approval of the location of all fences and gates that it intends to construct on Owner's Property. Developer shall repair or replace any fences, gates or cattle guards damaged or removed in connection with Developer's activities on Owner's Property, unless waived by Owner. Fences removed from the Easement Properties, if replaced, shall be re-built by Developer at its expense in mutually agreeable locations off the Turbine Sites, Met Tower Sites, and Access Easement Properties. Once completed, all replacement fences, gates and cattle guards shall be owned and maintained by Owner. To the extent possible, Developer will take into consideration the Owner's operations during periods of construction, maintenance or removal activity. Developer agrees to provide reasonable advance notice to Owner as to periods of construction, maintenance or removal activity by Developer.

9.3 Insurance and Indemnity. Developer shall maintain commercial general liability insurance in an amount not less than Two Million Dollars ($2,000,000.00) of combined single limit liability coverage. Developer shall provide certificates of this insurance coverage to Owner promptly after execution of this Agreement and thereafter upon Owner's written request.

Developer will indemnify, hold harmless and defend Owner against liability for all personal injuries, liabilities, actions and claims to the extent that they are caused by Developer, its exercise of rights granted in this Agreement or its operations or activities on Owner's Property. Developer will also pay Owner's reasonable attorneys fees in connection with an indemnified claim. This indemnity does not cover losses of rent, business opportunities, crop production, profits and the like that may result from Owner's loss of use of the Easement

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Properties occupied by Wind Project Improvements or affected by easement rights granted in this Agreement. This indemnity does not apply if a claim is asserted by Owner's immediate family or business entities or trusts in which Owner has an interest ("Related Parties"). Owner authorizes Developer to take reasonable safety measures to reduce the risk that the Wind Project Improvements will cause harm or injury to people, livestock, other animals and property. Nothing in this Agreement shall be construed to be a waiver by Owner or Related Parties for any claim of liability, personal injury or property damage caused by the willful misconduct or negligence of Developer.

9.4 Requirements of Governmental Agencies. Developer shall comply in all material respects with valid federal, state or local laws or regulations applicable to the Wind Project. Developer shall have the right, in its sole discretion and at its sole expense, in its name or Owner's name, to contest the validity or applicability to the Easement Properties or Wind Project of any law, ordinance, statute, order, regulation, property assessment or the like made by any governmental agency or entity. Developer shall control any such contest and Owner shall cooperate with Developer in every reasonable way in such contest, at no out-of-pocket expense to Owner.

9.5 Mechanic's Liens. Developer shall not permit any mechanic's liens arising out of Developer's use of the Easement Properties under this Agreement to be filed against the Easement Properties. If Developer wishes to contest any such lien, Developer shall, within sixty (60) days after it receives notice of the lien, provide a bond or other security Owner may reasonably request, or remove such lien from the Easement Properties in the manner provided by applicable law.

9.6 Environmental Laws. Developer shall not violate, and agrees to indemnify, hold harmless and defend Owner against, any violation on the Easement Properties by Developer, its agents or contractors, of any Environmental Laws and will not release or dispose of any Hazardous Substances on the Easement Properties.

9.7 Remediation of Glare and Shadow Flicker. Developer agrees that should Owner experience problems with glare or shadow flicker in Owner's house for 30 hours per year or more (or such other amount of time as dictated by applicable laws or regulations) associated with the presence of the Turbines on Owner's Property or adjacent properties, Developer will promptly investigate the nature and extent of the problem and the best methods of correcting any problems found to exist. Developer at its expense, with agreement of Owner, will then promptly undertake measures such as tree planting or installation of awnings necessary to mitigate the offending glare or shadow.

9.8 Removal of Wind Project Improvements. Owner shall have no ownership or other interest in any Wind Project Improvements installed on the Easement Properties, and Developer shall have the express right, at any time and in its sole discretion, to remove one or more Turbines or other Wind Project Improvements from the Easement Properties. Owner expressly waives any statutory or common law liens to which Owner might be entitled against the Wind Project Improvements. Upon full or partial termination of any of the Easements, Developer shall remove all physical material pertaining to the Wind Project Improvements from the affected

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Easement Properties to a depth of thirty-six inches (36") beneath the soil surface, and restore the area formerly occupied by the Wind Project Improvements to substantially the same physical condition that existed immediately before the construction of the Wind Project Improvements (the "Removal Obligations"). If Developer fails to complete its Removal Obligations within twelve (12) months of full or partial termination of the applicable Easement, Owner may do so, in which case Developer shall reimburse Owner for costs of fulfilling Developer's Removal Obligations incurred by Owner.

9.9 Permanent Road Construction Requirements. On Easement Properties under cultivation at the time of construction, to the extent reasonably practical consistent with Developer's need to provide suitable access for delivery, erection, operation, and maintenance of the Wind Project Improvements, access roads will follow existing section lines and property lines or be oriented in a north-south or east-west direction.

## 10. Owner's Duties and Representations

10.1 Owner's Authority. Owner is the sole owner of the Owner's Property including the Easement Properties and has the unrestricted right and authority to sign this Agreement and to grant Developer the Easements and other rights granted in this Agreement. When signed by both parties, this Agreement constitutes a valid and binding agreement enforceable against Owner in accordance with its terms.

10.2 Exclusivity. Owner agrees that Developer shall have the exclusive right to convert all of the wind resources of the Owner's Property. Owner's activities and any grant of rights Owner makes to any third party, whether located on the Easement Properties or elsewhere, shall not, now or in the future, interfere in any way with Developer's exercise of any rights granted under this Agreement.

10.3 Liens and Tenants. Owner shall provide Developer with all information reasonably required for Developer, at its expense, to identify all liens and other exceptions to Owner's fee title ownership of the Easement Properties (collectively, "Liens;" holders of Liens and tenants are referred to as "Lienholders"). Owner shall cooperate with Developer to obtain a non-disturbance agreement from each Lienholder (recorded or unrecorded, at Developer's option), which provides that the Lienholder shall not disturb Developer's possession or rights under this Agreement or terminate this Agreement or the Easements so long as Owner is not entitled to terminate this Agreement or the Easements. If Developer and Owner are unable to obtain a non-disturbance agreement from a Lienholder, Developer shall be entitled (but not obligated) to withdraw from this Agreement or to make payments in fulfillment of Owner's obligations to the Lienholder and may deduct the amount of such payments from amounts due to Owner under this Agreement. Developer's rights under this Section 10.3 are subordinate to Owner's rights under Section 6.5 above as the same relates to oil and gas exploration and/or production

10.4 Requirements of Governmental Agencies. Owner shall assist and fully cooperate with Developer, at no out-of-pocket expense to Owner, in complying with or obtaining any zoning and Owner's Property use permits and approvals, building permits, environmental impact



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reviews or any other governmental approvals required for the financing, construction, installation, replacement, relocation, maintenance, operation or removal of the Wind Project Improvements, including execution of applications for such approvals.

10.5 Indemnity. Owner agrees to indemnify and hold harmless Developer, its agents, employees, successors, and assigns against all personal injuries, liabilities, causes of actions, and claims, including attorneys fees to the extent caused by the willful misconduct or negligence of Owner not covered by insurance which protects Developer from loss.

10.6 Hazardous Materials. Owner represents and warrants to the best of Owner's knowledge and belief that there are no coal shafts, coal mines, abandoned wells, solid waste disposal sites, Hazardous Substances, or underground storage tanks located on the Easement Properties; that the Easement Properties do not contain levels of petroleum or other Hazardous Substances which require remediation; and, that the Easement Properties are not subject to any judicial or administrative action, investigation or order under any applicable Environmental Laws or regulations. Owner warrants that Owner has done nothing to contaminate the Easement Properties with petroleum or other Hazardous Substances. Owner agrees to indemnify and hold Developer harmless against any claims or losses resulting from Owner's violation of any applicable Environmental Laws, except those resulting from Developer's activities on the Easement Properties.

10.7 Hunting. If Owner hunts and/or discharges firearms on and near the Easement Properties, Owner shall take such precautions as are reasonable to ensure the safety of Developer's site personnel and the protection of Wind Project Improvements on the Easement Properties during and after construction of the Wind Project.

10.8 Recreation. Owner may allow Owner's guests to use the Owner's Property and the Easement Properties, except the Turbine and Met Tower Site Properties, for recreational purposes except at times or under circumstances that adversely affect public health and safety or operation and safety of the Wind Project Improvements. If Owner or Owner's guests use snowmobiles, all-terrain vehicles, or undertake other recreational activity in the vicinity of the Easement Properties, it shall take such reasonable precautions so as to ensure the safety of Owner's guests, Developer's site personnel, and the protection of Wind Project Improvements on the Easement Properties during and after construction of the Wind Project.

11. **Termination.**

11.1 Developer's Right to Terminate. Developer shall have the right to terminate this Agreement as to all or any part of the Easement Properties, or as to any Turbine or other Wind Project Improvement, at any time, effective upon thirty (30) days' written notice to Owner.

11.2 Owner's Right to Terminate. In addition to Owner's right to terminate described in Section 4 (for Developer's failure to timely initiate construction of the Wind Project Improvements) and except as qualified by Sections 12 and 13, Owner shall have the right to terminate this Agreement and the Easements only as to those Easement Properties where: (a) a material default in the payment by Developer of Annual Installment Payments under this

Agreement shall have occurred and remains uncured; (b) Owner simultaneously gives Developer and all Mortgagees and Assignees written notice of the default setting forth in reasonable detail the facts pertaining to the default and specifying the method of cure; and, (c) the default shall not have been remedied within thirty (30) days after Developer, or within ninety (90) days in the case of all Assignees and Mortgagees, receives the written notice.

Except as specifically allowed by this Section 11, this Agreement and the Easements shall not be terminable by Owner under any circumstances. Owner's sole remedy for Developer's breach of its duties under this Agreement (except its duty to timely pay Annual Installment Payments and failure to timely fulfill its Removal Obligations after termination under Section 9.8) shall be an action at law or in equity for money damages or specific performance, together with reasonable attorneys' fees if Owner prevails.

11.3 Effect of Termination. Upon full or partial termination of this Agreement, whether as to all of the Easement Properties or only as to some or parts of the Easement Properties, Developer shall: (a) provide Owner with a recordable termination of all of Developer's right, title and interest in the Easement Properties, or in those parts of the Easement Properties as to which this Agreement has been terminated, and (b) as soon as reasonably practicable after termination, remove all Wind Project Improvements from those Easement Properties as to which this Agreement was terminated in compliance with its Removal Obligations.

## 12. Financing and Assignment by Developer

12.1 Right to Mortgage and Assign. Developer may, upon notice to Owner, without Owner's consent or approval, 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 Properties, or the Wind Project Improvements (collectively, its "Wind Project Assets"). These various security interests in all or a part of the Wind Project Assets are collectively referred to as "Mortgages" and the holders of the Mortgages, their designees and assigns are referred to as "Mortgagees." Developer's notice to Owner shall include the name and address of each Mortgagee and/or Assignee (as defined below). Developer may also, without Owner's consent, sell, convey, lease, or assign all or any portion of its Wind Project Assets on either an exclusive or a non-exclusive basis, or grant sub-easements co-easements, separate easements, leases, licenses or similar rights, however denominated (collectively, "Assignment"), to one or more persons or entities (collectively, "Assignees"). Assignees and Mortgagees shall use the Wind Project Assets only for the uses permitted under this Agreement. Assignees and Mortgagees shall have all rights and remedies allowed them under then-existing laws, except as limited by their individual agreements with Developer, provided that under no circumstances shall any Mortgagee or Assignee have any greater rights of ownership or use of Owner's Property than the rights granted to Developer in this Agreement.

12.2 Owner Obligations. Owner agrees to consent in writing to financing documents as may reasonably be required by Mortgagees. As a precondition to exercising any rights or remedies related to any alleged default by Developer under this Agreement, Owner shall give written notice of the default to each Mortgagee and Assignee at the same time it delivers notice of default to Developer, specifying in detail the alleged event of default and the required remedy.

Each Mortgagee and Assignee shall have the same amount of time to cure the default as to Developer's entire interest or its partial interest in the Wind Project Assets as is given to Developer and the same right to cure any default as Developer or to remove any property of Developer, Mortgagees or Assignees located on the Easement Properties. The cure period for each Mortgagee shall begin to run at the end of the cure period given to Developer in this Agreement, but in no case shall the cure period for any Mortgagee be less than ninety (90) days after receipt of the default notice. Failure by Owner to give a Mortgagee or Assignee notice of default shall not diminish Owner's rights against Developer, but shall preserve all rights of the Mortgagee or Assignee to cure any default and to remove any property of Developer, the Mortgagee or Assignee located on the Easement Properties.

12.3 Mortgagee/Assignee Obligations. Any Mortgagee or Assignee that does not directly hold an interest in the Wind Project Assets, or whose interest is held solely for security purposes, shall have no obligation or liability under this Agreement prior to the time the Mortgagee or Assignee directly holds an interest in this Agreement, or succeeds to absolute title to Developer's interest. A Mortgagee or Assignee shall be liable to perform obligations under this Agreement only for and during the period it directly holds such interest or absolute title. Any Assignment permitted under this Agreement shall not release Developer or other assignor from obligations accruing before the date that this Agreement is assumed by the Assignee.

12.4 Right to Cure Defaults/Notice of Defaults/Right to New Easement. To prevent termination of this Agreement, the Easements, or any partial interest in this Agreement and the Easements, Developer, any Mortgagee or Assignee shall have the right, but not the obligation, at any time to perform any act necessary to cure any default and to prevent the termination of this Agreement or any interest in the Wind Project Assets.

12.5 Extended Cure Period. If any default by Developer under this Agreement cannot be cured without obtaining possession of all or part of the Wind Project Assets, then any such default shall be deemed remedied if a Mortgagee: (a) within ninety (90) days after receiving notice from Owner as set forth in Section 12.2, acquires possession of all or part of the Wind Project Assets, or begins appropriate judicial or nonjudicial proceedings to obtain the same; (b) diligently prosecutes any such proceedings to completion; and (c) after gaining possession of all or part of the Wind Project Assets, cures defects and performs all other obligations as and when the same are due in accordance with the terms of this Agreement. If a Mortgagee is prohibited by any court or by operation of any bankruptcy or insolvency laws from commencing or prosecuting the proceedings described above, the ninety (90) day period specified above for commencing proceedings shall be extended for the period of such prohibition.

12.6 Certificates, etc. Owner shall execute estoppel certificates (certifying as to truthful matters, including without limitation that no default then exists under this Agreement, if such be the case), consents to assignment and non-disturbance agreements as Developer or any Mortgagee or Assignee may reasonably request from time to time. Owner and Developer shall cooperate in amending this Agreement from time to time to include any provision that may be reasonably requested by Developer or any Mortgagee or Assignee to implement the provisions contained in this Agreement or to preserve a Mortgagee's security interest in the Wind Project Assets

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13. **Mortgagee Protection**. Any Mortgagee, upon delivery to Owner of notice of its name and address, for so long as its Mortgage is in existence shall be entitled to the following protections which shall be in addition to those granted elsewhere in this Agreement:

13.1 Mortgagee's Right to Possession, Right to Acquire and Right to Assign. A Mortgagee shall have the absolute right: (a) to assign its Mortgage; (b) to enforce its lien and acquire title to all or any portion of the Wind Project Assets by any lawful means; (c) to take possession of and operate all or any portion of the Wind Project Assets and to perform all obligations to be performed by Developer under this Agreement, or to cause a receiver to be appointed to do so; and (d) to acquire all or any portion of the Wind Project Assets by foreclosure or by an assignment in lieu of foreclosure and thereafter without Owner's consent to assign or transfer all or any portion of the Wind Project Assets to a third party. A Mortgagee which assigns or transfers Wind Project Assets to a third party shall notify Owner of the name and address of the Assignee or transferee.

13.2 Opportunity to Cure.

(a) During any period of possession of the Easement Properties by a Mortgagee (or a receiver requested by a Mortgagee) and/or while any foreclosure proceedings instituted by a Mortgagee are pending, the Mortgagee shall pay or cause to be paid the fees and all other monetary charges payable by Developer under this Agreement which have accrued and are unpaid at the commencement of the period and those which accrue thereafter during the period. Following acquisition of all or a portion of the Wind Project Assets by the Mortgagee as a result of either foreclosure or acceptance of an assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale, this Agreement shall continue in full force and effect and the Mortgagee or party acquiring title to Developer's Wind Project Assets shall, as promptly as reasonably possible, commence the cure of all defaults under this Agreement and thereafter diligently process such cure to completion, whereupon Owner's right to terminate this Agreement based upon such defaults shall be deemed waived; provided, however, that the Mortgagee or party acquiring title to Developer's Easement shall not be required to cure those defaults which are not reasonably susceptible of being cured or performed by such party ("non-curable defaults"). Non-curable defaults shall be deemed waived by Owner upon completion of foreclosure proceedings or acquisition of Developer's interest in this Agreement by such party.

(b) Any Mortgagee or other party who acquires Developer's interest in the Wind Project Assets pursuant to foreclosure or assignment in lieu of foreclosure shall not be liable to perform the obligations imposed on Developer by this Agreement incurred or accruing after the party no longer has ownership or possession of the Wind Project Assets.

(c) Neither the bankruptcy nor the insolvency of Developer shall be grounds for terminating this Agreement as long as all Annual Installment Payments and all other monetary charges payable by Developer under this Agreement are paid by the Mortgagee in accordance with the terms of this Agreement.

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13.3 New Easement.

(a) If this Agreement terminates because of Developer's default, if the Easements are foreclosed, or if this Agreement is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditor's rights and, within ninety (90) days after such event, Developer or any Mortgagee or Assignee shall have arranged to the reasonable satisfaction of Owner for the payment of all fees or other charges due and payable by Developer as of the date of such event, then Owner shall execute and deliver to Developer or such Mortgagee or Assignee or to a designee of one of these parties, as the case may be, new easements to the Easement Properties which (i) shall be for a term equal to the remainder of the Term before giving effect to such rejection or termination; (ii) shall contain the same covenants, agreements, terms, provisions and limitations as this Agreement (except for any requirements that have been fulfilled by Developer or any Mortgagee or Assignee prior to rejection or termination of this Agreement); and, (iii) shall include that portion of the Wind Project Assets in which Developer or such other Mortgagee or Assignee had an interest on the date of rejection or termination.

(b) After the termination, rejection or disaffirmation of this Agreement and during the period thereafter during which any Mortgagee shall be entitled to enter into new easements for the Easement Properties, Owner will not terminate the rights of any Assignee unless in default under its Assignment.

(c) If more than one Mortgagee makes a written request for new easements pursuant to this provision, the new easements shall be delivered to the Mortgagee requesting such new easements whose Mortgage is prior in lien, and the written request of any other Mortgagee whose lien is subordinate shall be void and of no further force or effect.

(d) The provisions of this Section 13 shall survive the termination, rejection or disaffirmation of this Agreement and shall continue in full force and effect thereafter to the same extent as if this Section 13 were a separate and independent contract made by Owner, Developer and each Mortgagee, and, from the effective date of such termination, rejection or disaffirmation of this Agreement to the date of execution and delivery of such new easements, such Mortgagee may use and enjoy the Easement Properties without hindrance by Owner or any person claiming by, through or under Owner; provided that all of the conditions for the new easements as set forth above are complied with.

13.4 Mortgagee's Consent to Amendment, Termination or Surrender. Notwithstanding any provision of this Agreement to the contrary, the parties agree that so long as there exists an unpaid Mortgagee, this Agreement shall not be modified or amended, and Owner shall not accept a surrender, cancellation or release of all or any part of the Wind Project Assets from Developer, prior to expiration of the Term without the prior written consent of the Mortgagee. This provision is for the express benefit of and shall be enforceable by each Mortgagee as if it were a party named in this Agreement.

13.5 No Merger. There shall be no merger of this Agreement or of the Easements with the fee estate in the Easement Properties by reason of the fact that this Agreement or any interest in the

Easements may be held, directly or indirectly, by or for the account of any person or persons who shall own any interest in the fee estate. No merger shall occur unless and until all persons at the time having an interest in the fee estate in the Easement Properties and all persons (including each Mortgagee) having an interest in this Agreement or in the estate of Owner and Developer shall sign and record a written instrument effecting such merger.

13.6 Liens. On the commencement of this Agreement, the Easement Properties shall be free and clear of all monetary liens other than those expressly approved by Developer. Thereafter, any assignment of this Agreement, mortgage, deed of trust or other monetary lien placed on the Easement Properties by Owner, or permitted by Owner to be placed or to remain on the Easement Properties, shall be subject to this Agreement, to any Assignment or Mortgage then in existence on the Wind Project Assets as permitted by this Agreement, to Developer's right to encumber the Wind Project Assets, and to any and all documents executed or to be executed by Owner in connection with Developer's development of all or any part of the Easement Properties. Owner agrees to cause any monetary liens placed on the Easement Properties by Owner in the future to incorporate the conditions of this Section 13.6.

13.7 Further Amendments. At Developer's request, Owner shall amend this Agreement to include any provision which may reasonably be requested by a proposed Mortgagee; provided, however, that such amendment shall not impair any of Owner's rights under this Agreement or increase the burdens or obligations of Owner under this Agreement. Upon the request of any Mortgagee, Owner shall execute any additional instruments reasonably required to evidence such Mortgagee's rights under this Agreement.

14. **Notices.** All notices or other communications required or permitted by this Agreement 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:

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

Owner: **Calvin J. and Jeannette A. Kessler**
Address: 108 Fourth Avenue S.W.
Beulah, ND 58523-6723
Telephone:

Developer: Minnesota Power
30 West Superior Street
Duluth MN 55802
Attn: Renewable Business Operations Manger
Telephone: 218-722-2641



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Any Assignee or Mortgagee:

The address of the Assignee or Mortgagee as shown in the written notice to Owner of the Assignment or Mortgage.

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.

15. **Miscellaneous**

15.1 Unavoidable Delays. If either party is delayed, hindered in or prevented from performing any act required under this Agreement by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, natural disasters, war, civil strife or other violence, or other cause beyond such party's control, the affected party, upon giving notice to the other party, shall be excused from performing the act (except payment of consideration) for the period of the delay. The affected party shall use its reasonable efforts to avoid or remove the causes of nonperformance and shall continue performance whenever the causes for nonperformance are removed.

15.2 Runs With the Owner's Property. The Easements and any rights or obligations in this Agreement shall run with the Owner's Property affected and shall be binding on, and inure to the benefit of, Owner and Developer, Mortgagees, Assignees, and their respective successors and assigns, heirs, personal representatives, tenants, or persons claiming through them.

15.3 Memorandum. Owner and Developer shall execute in recordable form, and Developer at its expense shall then record, a memorandum of this Agreement satisfactory in form and substance to Developer and Owner. Owner consents to the recordation of the interest of any Mortgagee or Assignee in the Easement Properties.

15.4 Entire Agreement/Amendments. This Agreement constitutes the entire agreement between Owner and Developer respecting its subject matter and replaces and supersedes any prior agreements. Any agreement, understanding or representation respecting the subject matter of this Agreement not expressly set forth in this Agreement or a later writing signed by both parties, is null and void. This Agreement and the Easements shall not be modified or amended except in a writing signed by the parties or their respective successors in interest.

The parties understand that following construction of the Wind Project Improvements it will be necessary to substitute **Exhibit C** for **Exhibit B**. The parties agree to cooperate in this substitution of exhibits and in executing any additional agreements or amendments reasonably needed by the parties for their business purposes so long as they do not adversely affect the rights of either party or violate the terms and spirit of this Agreement.

15.5 Legal Matters. This Agreement shall be governed by and interpreted in accordance with the laws of the State of North Dakota.

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15.6 Partial Invalidity. Should any provision of this Agreement be held, in a final and unappealable decision by a court of competent jurisdiction, to be either invalid, void or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect, unimpaired by the holding. Notwithstanding any other provision of this Agreement, the parties agree that in no event shall the Term be for longer periods than the longest periods permitted by applicable law.

15.7 Tax Credits. If under applicable law Developer becomes ineligible for any tax credit, benefit or incentive for alternative energy expenditure established by any local, state or federal government, then, at Developer's option, Owner and Developer shall amend this Agreement or replace it with a different instrument so as to convert Developer's interest in the Easement Properties to a substantially similar interest that makes Developer eligible for such tax credit, benefit or incentive, so long as Owner's interests are not impaired.

15.8 Approvals. No approval required by this Agreement shall be unreasonably withheld (except in instances where this Agreement specifically permits a party to act in its sole discretion), conditioned or delayed. Unless a longer or shorter time is specified, all approvals required of either party shall be given or refused in writing within ten (10) days after receipt of the request for approval. Any delay of a requested approval longer than ten (10) business days shall be deemed an approval.

15.9 Lateral Support. Developer shall have and exercise the right of subjacent and lateral support for Wind Project Improvements on the Easement Properties to whatever extent is necessary for the safe construction, operation and maintenance of Wind Project Improvements. Owner expressly covenants that Owner shall not excavate so near the sides of or underneath the Wind Project Improvements as to undermine or otherwise adversely affect their stability.

15.10 Costs of Future Documentation. Developer or any Mortgagee or Assignee requesting or receiving from Owner additional, new or revised documents under the terms of this Agreement shall pay Owner's reasonable legal fees and other out of pocket expenses related to preparation, review, execution and delivery of the documents requested or received.

15.11 Counterparts. This Agreement may be executed in more than one counterpart, including facsimiles, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have hereby executed this Wind Project Easement Agreement as of the date first written above.

**Owner:**

Name: **Keith G. Kessler**

Name: **Deanna A. Kessler**

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**EXHIBIT A**

**Legal Description of Owner's Property**

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

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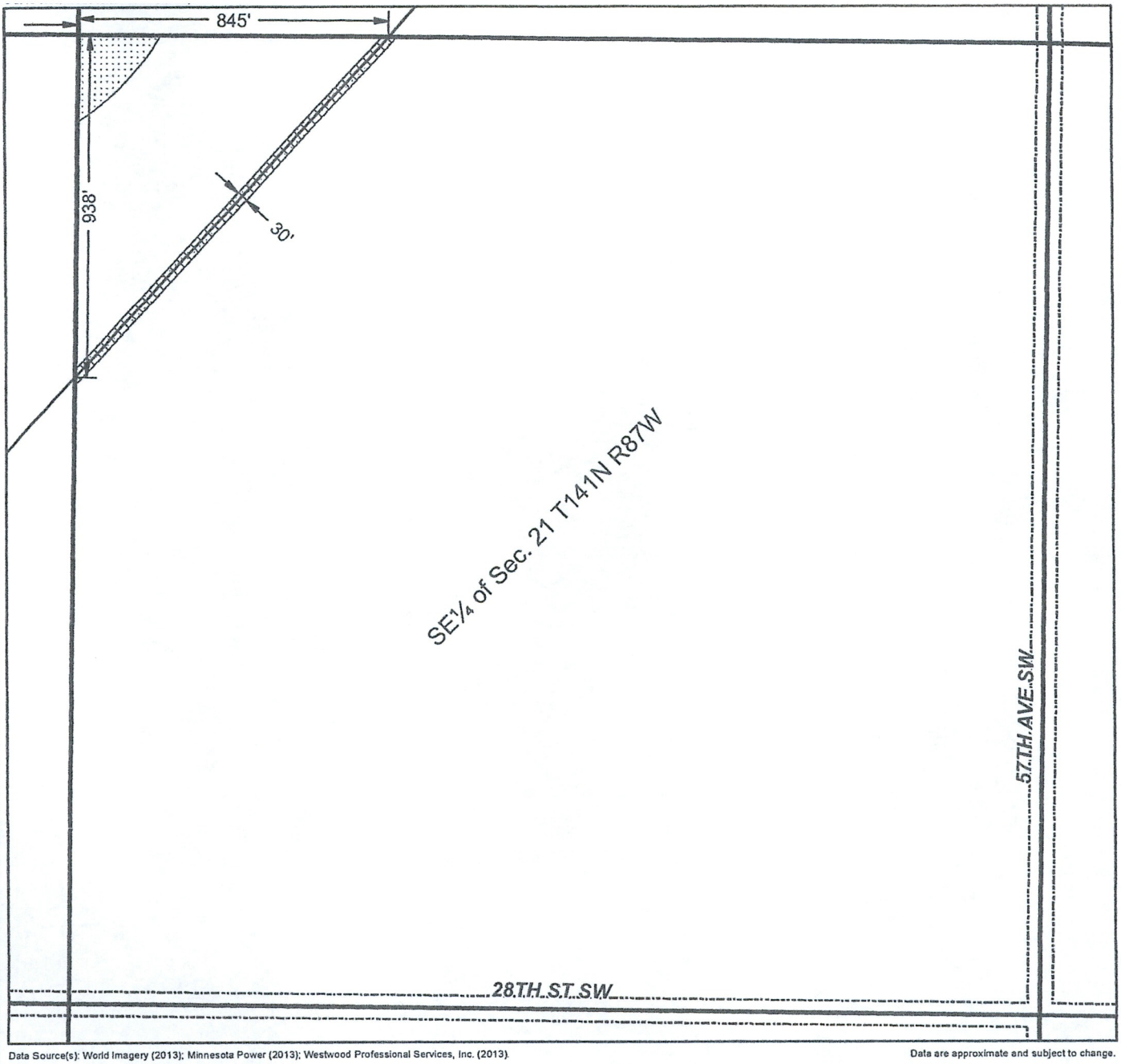


Data Source(s): World Imagery (2013); Minnesota Power (2013); Westwood Professional Services, Inc. (2013).

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

| SE¼ of Sec. 21 T141N R87W | |
|---|---|
| Wind Project Improvement Easement Area | 0.87 Acres |

N

0 400 Feet

B4 - 47
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

Document: P:\0001265.00\GIS\130903\B4-047-Rev C-BW.mxd 9/3/2013 2:19:21 PM

111

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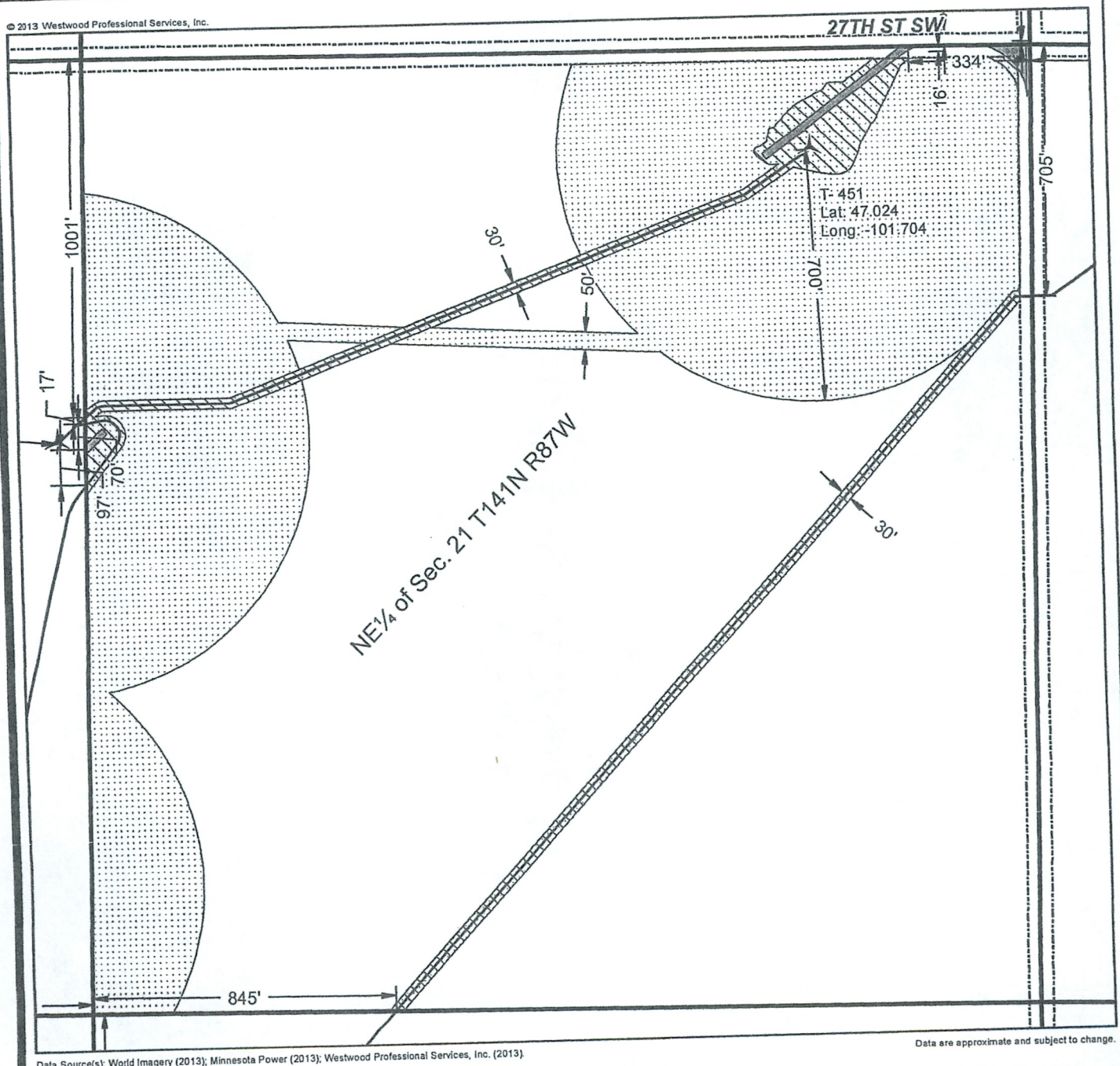


Data Source(s): World Imagery (2013); Minnesota Power (2013); Westwood Professional Services, Inc. (2013).

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

| NE¼ of Sec. 21 T141N R87W | |
|---|---|
| Wind Project Improvement Easement Area | 5.25 Acres |

N

0 400 Feet

B4 - 45
Rev. D

Westwood Professional Services, Inc.
7699 Anagram Drive
Eden Prairie, MN 55344

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# Bison 4

Oliver County, ND

## Exhibit B - Easement Plan

Map Document: P:\0001265.00\GIS\130903\B4_000-Rev D-BW.mxd 9/3/2013 2:24:01 PM

112

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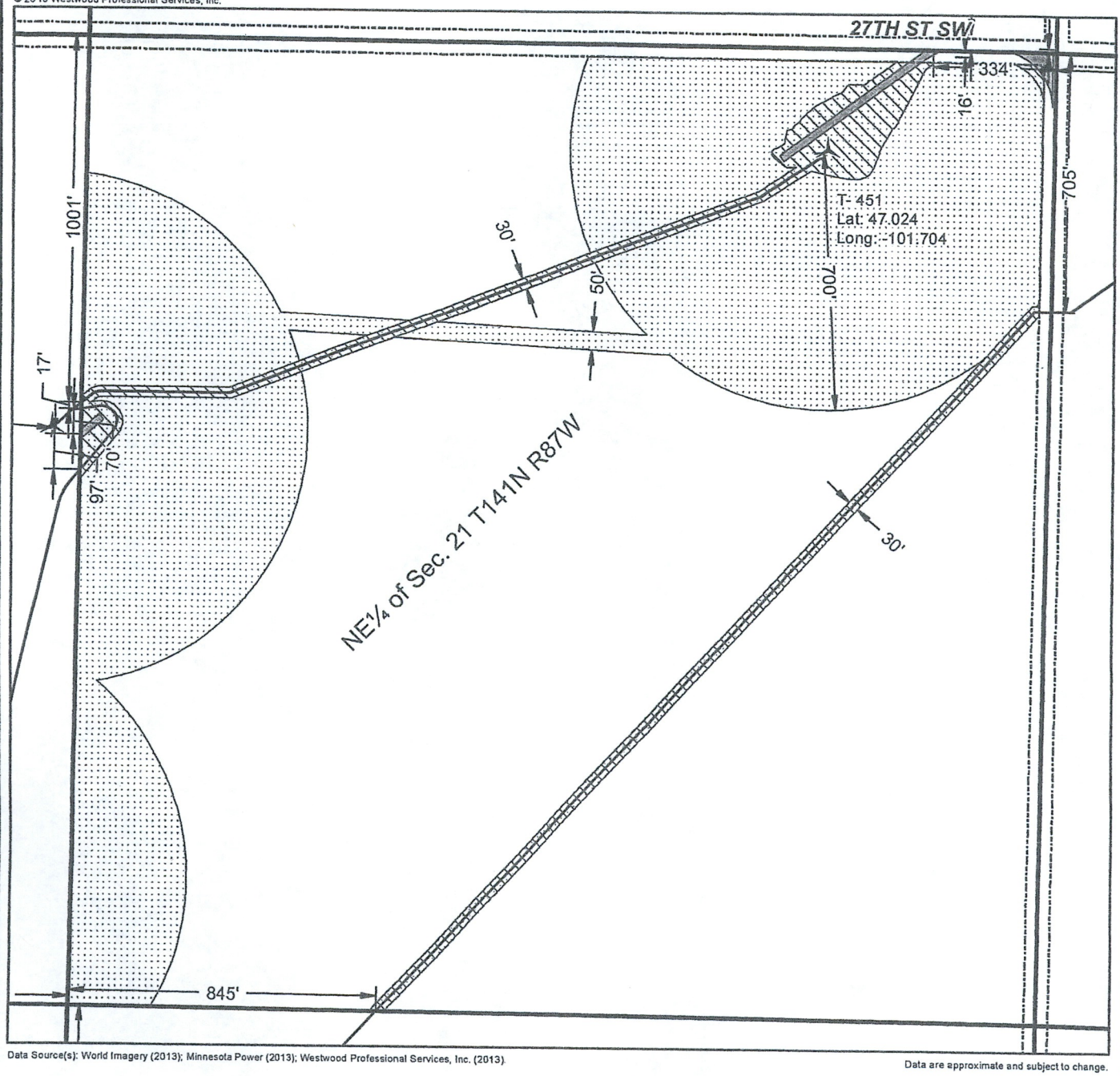


Data Source(s): World Imagery (2013); Minnesota Power (2013); Westwood Professional Services, Inc. (2013).

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

| NE¼ of Sec. 21 T141N R87W | |
|---|---|
| Wind Project Improvement Easement Area | 5.25 Acres |

N

0 400 Feet

B4 - 45
Rev. D

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Eden Prairie, MN 55344

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# Bison 4

Oliver County, ND

## Exhibit B - Easement Plan

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113

11-9-13 Ex

**EXHIBIT A**

**N½SE¼ of Section 15**
**SE¼ of Section 16**
**In T141N R87W, Oliver County, North Dakota, 5th Principal Meridian**



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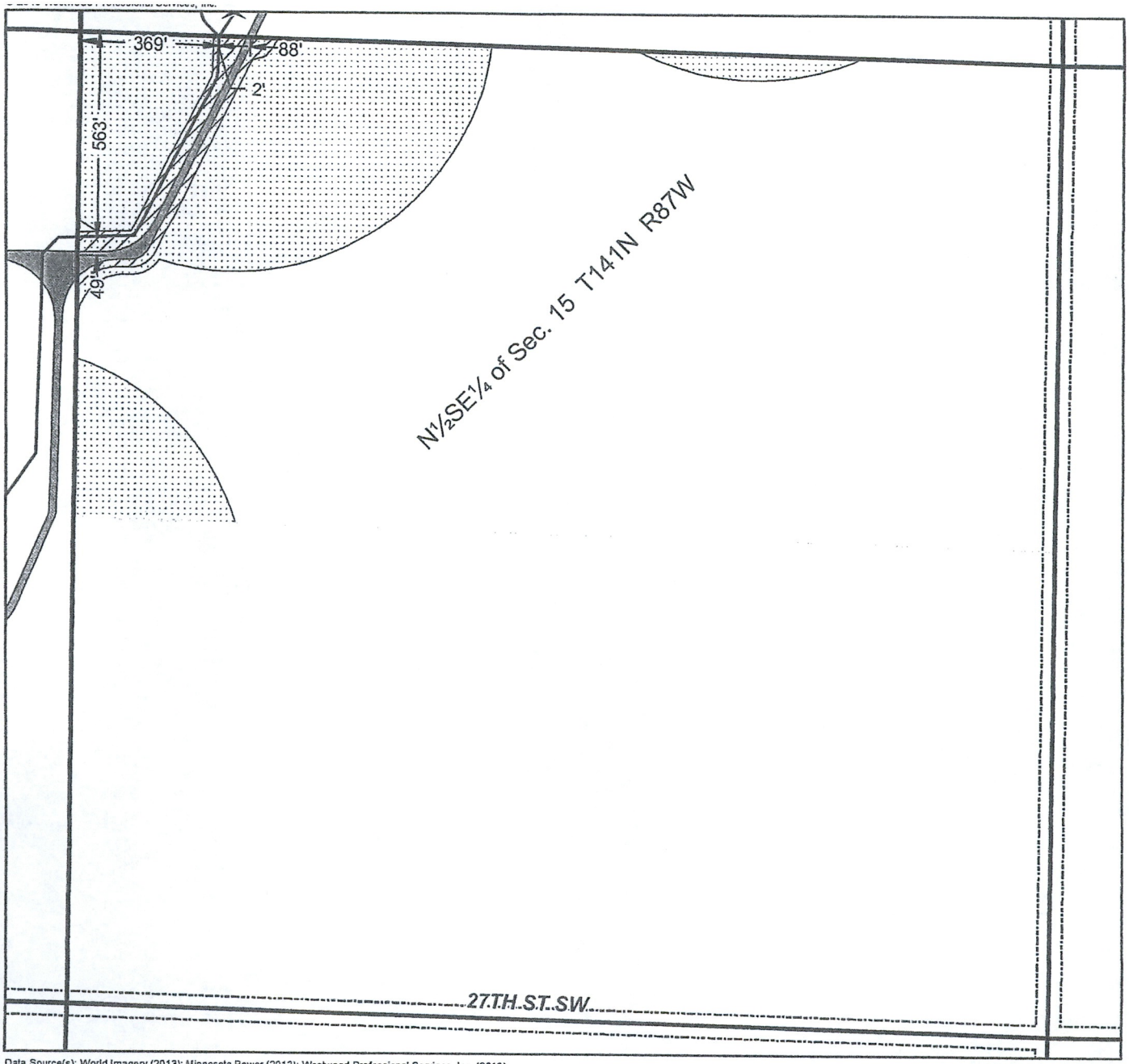


Data Source(s): World Imagery (2013); Minnesota Power (2013); Westwood Professional Services, Inc. (2013).

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

| N½SE¼ of Sec. 15 T141N R87W | |
|---|---|
| Wind Project Improvement Easement | 1.72 Acres |

N

0 400 Feet

B4 - 27.1
Rev. A

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# Bison 4

Oliver County, ND

## Exhibit B - Easement Plan

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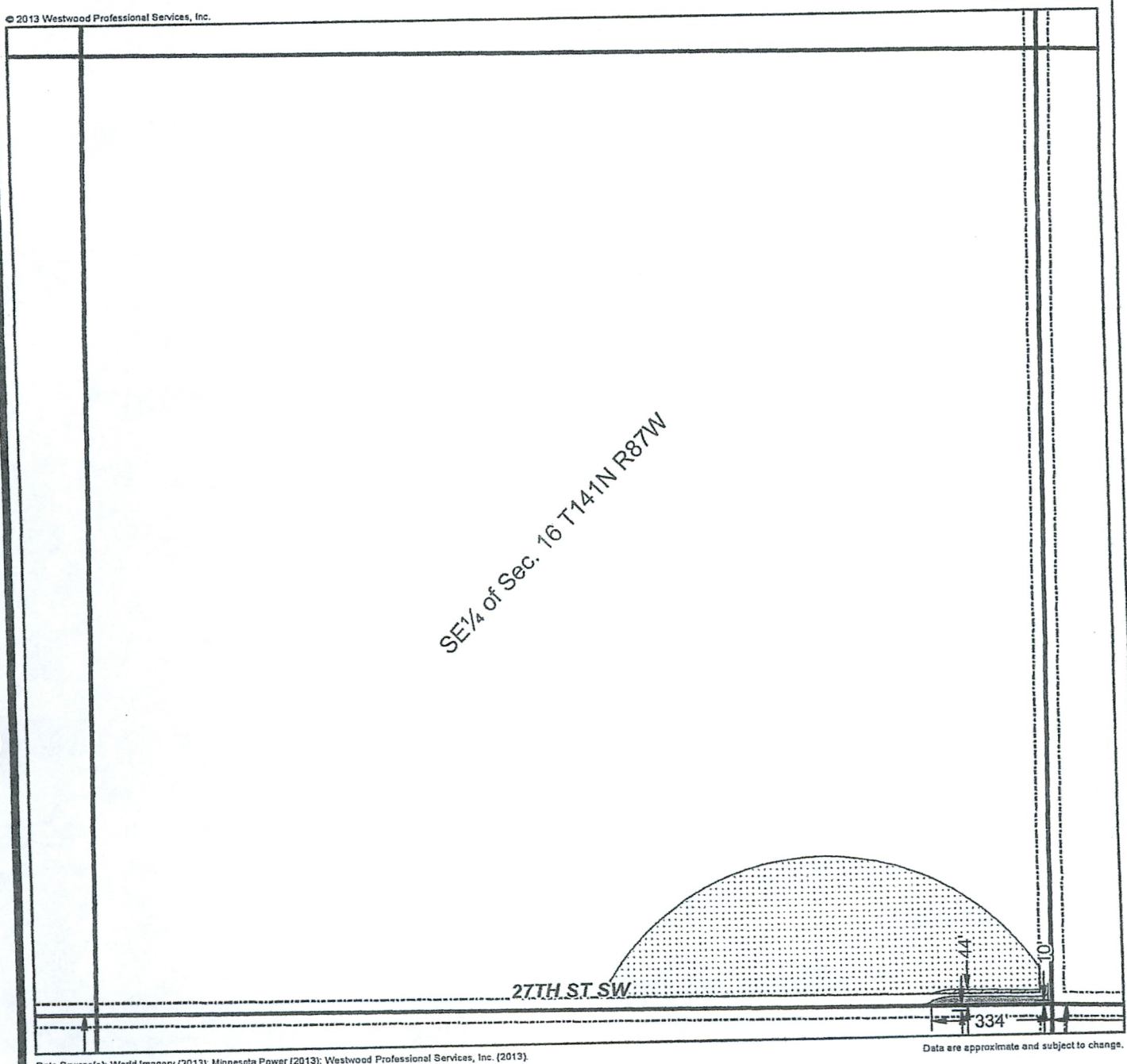


Data Source(s): World Imagery (2013); Minnesota Power (2013); Westwood Professional Services, Inc. (2013).

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

| SE¼ of Sec. 16 T141N R87W | |
|---|---|
| Wind Project Improvement Easement Area | 0.06 Acres |

N

0 400 Feet

B4 - 23
Rev. C

Westwood Professional Services, Inc.
7699 Anagram Drive
Eden Prairie, MN 55344

PHONE 952-937-5150
FAX 952-937-5822
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# Bison 4

Oliver County, ND

## Exhibit B - Easement Plan

Map Document: P:\0001265.00\GIS\130828\B4_000-Rev C-BW.mxd 8/28/2013 7:18:45 PM

119

**Bison 4 Weekly Construction Report**

**Case No. PU-13-127**

**Week Ending 11/10/13**

Civil crews working on access roads in Area 2.

Foundation crews placed rebar and began pouring foundations is Area 1.

Collector crews continue to install home run cable and directional drilling under roads.

Veit started foundation work at Bison 4 substation

**Work Force**

Minnesota Power – 6

Wanzek – 72

Veit – 4

120

11-10-13

**Bison 4 Weekly Construction Report**

**Case No. PU-13-127**

**Week Ending 11/17/13**

Civil crews working on access roads in Area 1 and Area 2.

Foundation crews placed rebar and continue to pour foundations in Area 1.

Collector crews continue to install home run cable and directional drilling under roads.

Veit continues work on substation foundations .

**Work Force**

Minnesota Power – 6

Wanzek – 72

Veit – 4

121

11-17-13

Copy

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 EASEMENTS
Kim Wilkens, OLIVER COUNTY RECORDER
By

RECORDER OLIVER COUNTY SEAL STATE OF NORTH DAKOTA

# 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



123

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.



124

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Easements effective the date set forth above:

OWNER:

Keith G. Kessler

Deanna A. Kessler

MINNESOTA POWER:

By: Bradley W. Oachs

Its: Chief Operating Officer

STATE OF North Dakota )
) SS.
COUNTY OF Morton )

The foregoing instrument was acknowledged before me this 23rd day of October, 2013, by **Keith G. Kessler and Deanna A. Kessler, husband and wife.**

Notarial Stamp or Seal

SCOTT MONROE
Notary Public
State of North Dakota
My Commission Expires April 24, 2014

Notary Public

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

The foregoing instrument was acknowledged before me this 8 day of November, 2013, by Bradley W. Oachs the Chief Operating Officer of Minnesota Power, a division of ALLETE, Inc., a Minnesota corporation, on behalf of the company.

Notarial Stamp or Seal

JILL S. HELMER
NOTARY PUBLIC - MINNESOTA
My Commission Expires Jan. 31, 2018

Notary Public

**THIS INSTRUMENT DRAFTED BY:**
Minnesota Power
30 W. Superior St.
Duluth, MN 55802



125

OWNER:

Calvin J. Kessler
**Calvin J. Kessler**

Jeannette A. Kessler
**Jeannette A. Kessler**

STATE OF North Dakota )
) SS.
COUNTY OF Mercer )

The foregoing instrument was acknowledged before me this 12th day of September, 2013, by **Calvin J. Kessler and Jeannette A. Kessler, husband and wife.**

Notarial Stamp or Seal

SCOTT MONROE
Notary Public
State of North Dakota
My Commission Expires April 24, 2014

Notary Public



126

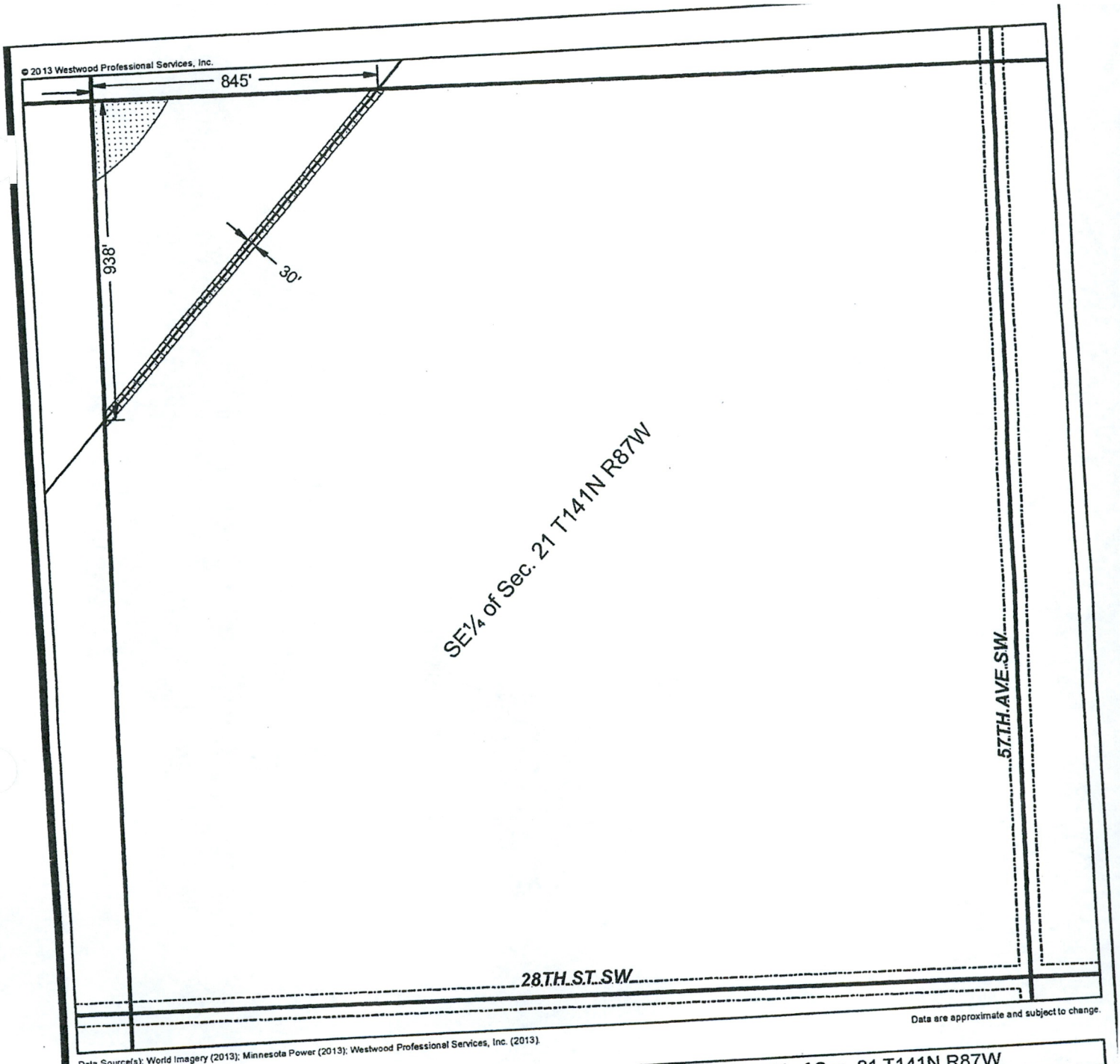
**EXHIBIT A**

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



127

© 2013 Westwood Professional Services, Inc.




Data are approximate and subject to change.

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

| SE¼ of Sec. 21 T141N R87W | |
|---|---|
| Wind Project Improvement Easement Area | 0.87 Acres |

**Legend**

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

N

0 400 Feet

B4 - 47
Rev. C

# Bison 4

Oliver County, NI

## Exhibit B - Easement Plar

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

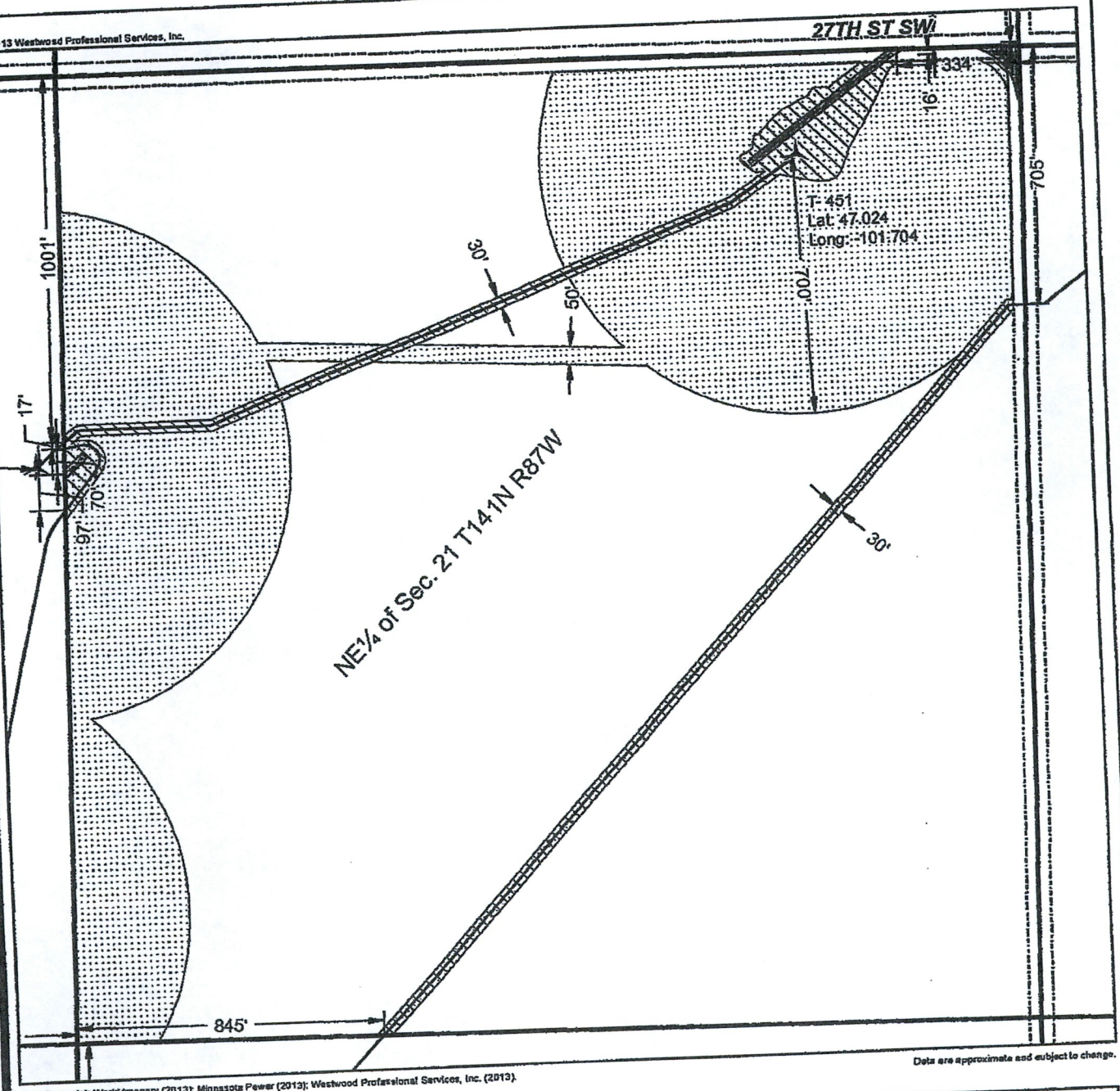
www.westwoodps.com

Westwood

Map Document: P:\0001265.00\GIS\1309031B4-047-Rev C-BW.mxd 9/3/2013 2:19:21 PM

128

© 2013 Westwood Professional Services, Inc.




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

| NE¼ of Sec. 21 T141N R87W | |
|---|---|
| Wind Project Improvement Easement Area | 5.25 Acres |

N

0 400 Feet

B4 - 45
Rev. D

Westwood

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:\0001265.00\GIS\130903\B4_000-Rev D-SW.mxd 9/3/2013 2:24:01 PM

129

**Bison 4 Weekly Construction Report**

**Case No. PU-13-127**

**Week Ending 11/24/13**

Civil crews working on access roads in Area 2 and Area 4.

Foundation crew continues pouring foundations in Area 1 and Area 2.

Collector crews continue to install home run cable and directional drilling under roads.

Veit continues work on substation foundations.

Century Fence is installing new fence around substation expansion.

**Work Force**

Minnesota Power – 6

Wanzek – 76

Veit – 6

Century – 4

**Bison 4 Weekly Construction Report**

**Case No. PU-13-127**

**Week Ending 12/1/13**

Civil crews applying gravel to 59th and 60th Ave. and working turbine sites in Area 4

Foundation crews placing rebar and pouring foundations is Area 1 and Area 2.

Collector crews are done for the season

Veit is installing foundations in Bison 4 substation.

**Work Force**

Minnesota Power – 5

Wanzek - 48

Veit – 6

131

12-1-13

**Bison 4 Weekly Construction Report**

**Case No. PU-13-127**

**Week Ending 12/8/13**

Civil crews are working turbine sites and access roads in Area 4

Foundation crews placing rebar and pouring foundations is Area 1 and Area 2.

Veit is installing foundations in Bison 4 substation.

**Work Force**

Minnesota Power – 4

Wanzek - 30

Veit – 6

88700 12/9/2013 2:12 PM PAGE: 1 OF 5
BOOK: JJ PAGE: 262 FEES: $32.00 MM MEMORANDUM OF EASEI
Kim Wilkens, OLIVER COUNTY RECORDER
By MM Kelly Ess Deputy

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

RECORDER OLIVER SEAL COUNTY STATE OF NORTH DAKOTA

**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"):

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



134

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.

135

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Easements effective the date set forth above:

OWNER:

Keith G. Kessler

Deanna A. Kessler

MINNESOTA POWER:

By: Bradley W. Dachs

Its: Chief Operating Officer

STATE OF North Dakota )
) SS.
COUNTY OF Morton )

The foregoing instrument was acknowledged before me this 22nd day of November, 2013, by **Keith G. Kessler and Deanna A. Kessler, husband and wife.**

Notarial Stamp or Seal

SCOTT MONROE
Notary Public
State of North Dakota
My Commission Expires April 24, 2014

Notary Public

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

The foregoing instrument was acknowledged before me this 5 day of December, 2013, by Bradley W Dachs the Chief Operating Officer of Minnesota Power, a division of ALLETE, Inc., a Minnesota corporation, on behalf of the company.

Notarial Stamp or Seal

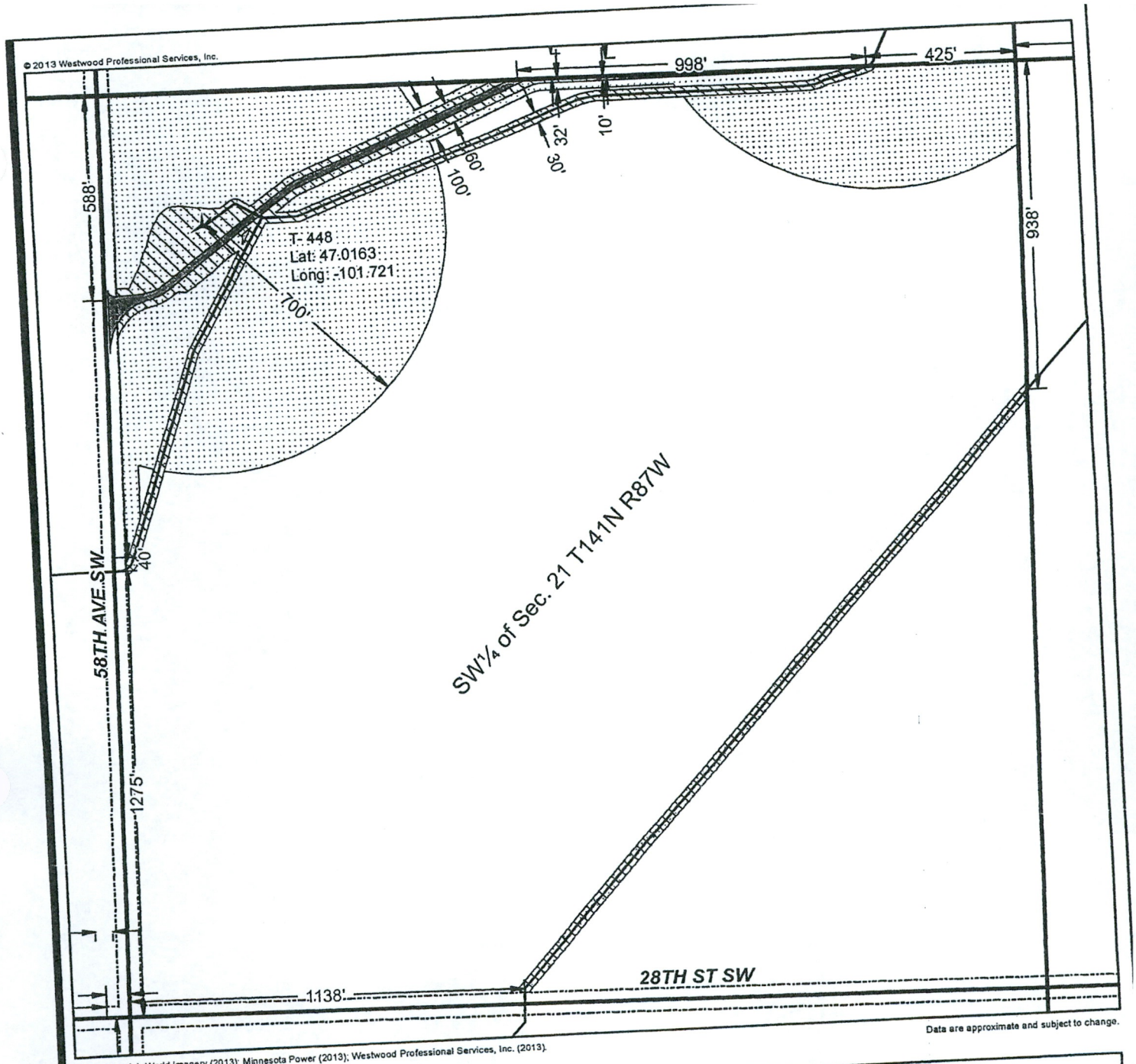
JILL S. HELMER
NOTARY PUBLIC - MINNESOTA
My Commission Expires Jan. 31, 2018

Notary Public

**THIS INSTRUMENT DRAFTED BY:**
Minnesota Power
30 W. Superior St.
Duluth, MN 55802



136




**Legend**

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

| SW¼ of Sec. 21 T141N R87W | |
|---|---|
| Wind Project Improvement Easement Area | 6.44 Acres |

N

0 400 Feet

B4 - 46
Rev. D

Map Document: P:\0001285.00\GIS\130903\B4_000-Rev D-BW.mxd 9/3/2013 2:24:25 PM

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
Westwood

# Bison 4

Oliver County, ND

## Exhibit B - Easement Plan

134 137

**EXHIBIT A**

**SW¼ of Section 21**
**In T141N R87W, of the 5th Principal Meridian, Oliver County, North Dakota.**



138

**WIND PROJECT EASEMENT 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 51 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.

# WIND PROJECT EASEMENT AGREEMENT

This Wind Project Easement Agreement is made as of 12/5/13 by and between **Keith G. Kessler and Deanna A. Kessler, husband and wife** ("Owner"), as owners of the real property described on attached **Exhibit A** ("Owner's Property"), and Minnesota Power, a division of ALLETE, Inc., a Minnesota corporation, ("Developer").

1. **Purpose.** This Agreement establishes the rights of the parties and their duties to each other with regard to the financing, construction, operation, repair, maintenance, replacement, and removal of all Wind Project Improvements (as defined below) in connection with Developer's Wind Project, whether located on or off Owner's Property.

2. **Definitions.** Capitalized terms used in this Agreement have the meaning given them in the text of the Agreement or in this definitions section.

"Access Rights" means the right of unobstructed ingress and egress to and from the Wind Project Improvements by Developer, its agents, contractors, successors and assigns.

"Collection Facilities" means the underground and above ground electrical collection and telecommunications lines, splice boxes, and all other devices and equipment used to connect the Turbines to electrical collection lines connected to the power grid and to the Wind Project's Met Towers and operations and maintenance facilities.

"Commercial Operation Date" means the date which is identified by written notice from Developer to owner as the commercial operation date of the Wind Project.

"Easements" means the Turbine Site Easement, Access Easement, Collection Easement, Construction Easement, Wind Non-Obstruction Easement, Noise Easement, Overhand Easement, Met Tower Site Easement and Met Tower Access Easement.

"Easement Properties" means the Turbine Sites, the Access Easement Property, Collection Easement Property, Construction Easement Property, Noise Easement Property, Overhang Easement Property, Met Tower Sites, and Met Tower Access Easement Property, all as described in Section 6 of this Agreement.

"Effective Date" means the date when all conditions precedent set forth in Section 5 of this Agreement are satisfied or waived, and all other documents required by Developer have been signed and delivered by Owner.

"Environmental Laws" shall mean any federal, state or local law, statute, code enactment, ordinance, rule, regulation, permit, consent, approval, authorization, license, judgment, order, writ, decree, injunction, common law (including without limitation the common law respecting nuisance and tortious liability), or other requirement having the force and effect of law or regulation, relating to the protection of human health and safety, occupational health and safety, the environment, or natural resources and wildlife, including, without limitation (i) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980(CERCLA), (ii) the Solid Waste Disposal Act, (iii) the Resource Conservation and Recovery Act (RCRA),



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(iv) the Toxic Substances Control Act (TSCA), (v) the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), (vi) the Clean Water Act, (vii) the Clean Air Act,, (viii) the Occupational Safety and Health Act (OSHA), (ix) the Safe Drinking Water Act, and (x) the Minnesota Environmental Response and Liability Act (MERLA), all as amended and in effect from time to time.

"**Exhibit B**" means the preliminary Easement Plan attached to this Agreement at the time it is signed showing the approximate planned location of all Wind Project Improvements and Easements located on the Owner's Property.

"**Exhibit C**" means the final as-built Easement Plan to be attached to this Agreement by Developer as a replacement for **Exhibit B** after construction of the Wind Project Improvements showing the exact locations of all Wind Project Improvements as constructed on Owner's Property and all Easements. Developer shall deliver **Exhibit C** to Owner within one hundred eighty (180) days after completion of construction of the Wind Project Improvements and after **Exhibit C** is delivered to Owner, any references in this Agreement that refer to **Exhibit B** shall be deemed to refer to **Exhibit C**.

"Hazardous Substance" means any substance which is defined as a hazardous substance, hazardous material, hazardous waste, pollutant, contaminant, or extremely or imminently hazardous substance or material under any Environmental Law.

"Met Tower" means a tower used primarily to gather and transmit meteorological data relating to the Wind Project, and includes the tower's foundations, meteorological data acquisition equipment, power source, underground data, and electrical collection lines.

"Met Tower Site" means each of those portions of Owner's Property on which a Met Tower is located. Met Tower Sites are identified and located as shown on **Exhibit B**, subject to final location determination in **Exhibit C**.

"Pre-Construction Activities" means any activities that Developer shall perform on Owner's Property before the Effective Date, which shall include but not be limited to soil borings, environmental assessments, micrositing and surveying.

"Turbine" means a wind turbine generator used to convert wind energy to electrical energy together with the foundation and tower on which it is mounted, as well as a pad mounted transformer, batteries and other devices for storage of electrical energy serving the wind turbine generator located on the Turbine Site.

"Turbine Site" means each of those portions of Owner's Property on which a Turbine is located. Turbine Sites are identified and located as shown on **Exhibit B**, subject to final location determination in **Exhibit C**.

"Wind Energy Purposes" means converting wind energy into electrical energy, collecting, storing, and transmitting that electrical energy, and all related development activities that Developer reasonably determines appropriate, including, without limitation, the right to study wind speed and feasibility of wind energy conversion on the Easement Properties; to construct, operate and maintain Turbines and Collection Facilities; and to use the Access Rights.



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"Wind Project" means Developer's wind energy project located in Morton, Mercer, and Oliver Counties in North Dakota and includes all Wind Project Improvements whether located on or off Owner's Property.

"Wind Project Improvements" means the Turbines, Collection Facilities, Met Towers, access roads, entrances, fences and gates, drainage systems, signs, information kiosk, operations and maintenance building, and all other structures, rights and facilities used in the construction, operation and maintenance of the Wind Project.

3. **Pre-Construction Activities.** Owner acknowledges that prior to commencing construction of the Wind Project, Developer may need to access Owner's Property to conduct Pre-Construction Activities and Owner hereby grants Developer access to Owner's Property for such purposes.

4. **Term.** The term of this Agreement shall begin on the date first written above and terminate concurrently with the Easements. The Term of the Easements ("Term") shall begin on the Effective Date and end on November 30, 2064 unless terminated as provided in this Agreement. If, within five (5) years of the date hereof, the Developer has not initiated construction of Wind Project Improvements on the Easement Properties, Owner may, upon notice to Developer, immediately terminate this Agreement; unless such failure to initiate construction of Wind Project Improvements is caused by unavoidable delays in obtaining the permits described in Section 5.5 (provided that Developer promptly commences construction after receipt of such permits).

5. **Conditions Precedent.** The Easements shall be of no force and effect until Developer is reasonably satisfied all of the following have occurred, or been waived by Developer. If any condition precedent is not satisfied or waived by Developer, Developer may terminate this Agreement upon notice to Owner and, in such event, Developer's sole obligation hereunder shall be to restore Owner's Property to substantially its condition as before Developer's occupancy.

5.1 Environmental Conditions. Receipt by Developer of environmental consultants' reports confirming there are no environmental conditions on the Easement Properties that would interfere with the Wind Project Improvements or cause Developer to incur environmental liability.

5.2 Cultural Properties. Receipt by Developer of reports confirming there are no traditional cultural properties, historic sites, or antiquities of state or national significance on the Easement Properties that would interfere with the Wind Project Improvements.

5.3 Soil Tests. Receipt of soil test results indicating that the Easement Properties are adequate to install Turbine foundations.

5.4 Wind Analysis. Receipt of reports from professional engineers and meteorologists that each Turbine on the Easement Properties shall produce an adequate amount of wind energy as determined by Developer.

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5.5 Permits. Receipt by Developer of all permits required for construction and operation of the Wind Project Improvements comprising the Wind Project, whether located on or off the Owner's Property.

5.6 Title. Approval by Developer of Owner's title to the Easement Properties based on title insurance commitments or title opinions obtained by Developer at its expense.

5.7 Subordination. Receipt by Developer from third parties, such as Lienholders and tenants of all subordination, non-disturbance and other agreements necessary as reasonably determined by Developer to assure Developer's right to undisturbed use and enjoyment of the Easement Properties according to the terms of this Agreement.

5.8 Adjoining Easements. Receipt by Developer of easements from adjoining property owners as reasonably deemed necessary by Developer to permit construction of the Wind Project.

5.9 Turbine Layout and Site Suitability. Receipt by Developer of analysis by a recognized wind resource analysis firm that the turbine selected for project is suitable for the site and that energy output projections from preliminary turbine layout support project economics.

6. **Grant of Easements.** Owner grants to Developer the following easements (collectively, "Easements"). Each of the Easements granted is irrevocable and for the exclusive use and benefit of Developer, its agents, and contractors unless otherwise specified in this Agreement. The Easements are granted subject to Owner's retained right to use the Easement Properties for agricultural uses that do not and will not interfere, in Developer's reasonable determination under the circumstances, with the Wind Project Improvements, Developer's operations, or the enjoyment of the rights granted to Developer in this Agreement. From and after the Effective Date, Developer shall pay Owner fair market value for actual crop loss and damage resulting from pre-construction, construction and operation and maintenance activities associated with Wind Project Improvements. 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.

6.1 Turbine Site Easement. Owner grants Developer an easement to construct, operate, replace, relocate, remove, and maintain a Turbine, together with associated roads and parking areas on each Turbine Site as shown on **Exhibit B**. This easement is referred to as the "Turbine Site Easement."

6.2 Access Easement. Owner grants Developer an easement on those portions of Owner's Property as shown on **Exhibit B** for unobstructed vehicular and pedestrian ingress to and egress from the Wind Project Improvements, whether located on or off Owner's Property. This easement is referred to as the "Access Easement" and the property subject to the burden of this easement is referred to as the "Access Easement Property." Developer shall have the right to travel over, across and along the Access Easement Property by means of existing roads and

lanes, and by roads Developer or Owner may construct or improve from time to time on, over, and across the Access Easement Property.

Owner reserves the right to use all roads on the Access Easement Property provided, however, that Owner shall not and shall not permit others to obstruct or damage the roads or in any other way interfere with Developer's rights under this Access Easement. If all or a part of the Access Easement Property constitutes a part of the width of a larger access easement straddling a property line between Owner's Property and the abutting property of an adjoining property owner, then Owner and Developer hereby grant such adjoining property owner an easement over such portion of the Access Easement Property for ingress and egress to the adjoining property for the conduct of farming activities on the adjoining property.

6.3 Collection Easement. Owner grants Developer an easement for the construction, operation, maintenance, replacement, relocation or removal of Collection Facilities on and under those portions of the Owner's Property as shown on **Exhibit B**. This easement is referred to as the "Collection Easement" and the property subject to the burden of this easement is referred to as the "Collection Easement Property."

6.4 Construction Easement. Owner grants Developer an easement for purposes of constructing, maintaining, repairing, replacing, and removing all or any part or element of the Wind Project Improvements. This easement is referred to as the "Construction Easement" and the property subject to the burden of this easement is referred to as the "Construction Easement Property." The Construction Easement Property is generally shown on **Exhibit B**. Developer may exercise its right to use all or any part of the Construction Easement Property as and when Developer deems it necessary or advisable to do so to perform the activities for which this Construction Easement is granted. In exercising its rights under this Construction Easement, Developer agrees to minimize interference with the necessary movement of Owner's livestock across the Owner's Property. After each use of the Construction Easement, Developer to the extent reasonably possible shall restore the Construction Easement Property to the condition it was in before Developer's use.

When installing, maintaining or removing the nacelle and rotor from any Turbine, this Construction Easement also shall permit the following: (a) (for the purpose of securing tag lines) travel on foot or in a pickup truck, SUV, small forklift or other similar vehicles onto Owner's Property up to seven hundred (700) feet in any direction from the center of the Access Easement Property; and (b) an erection crane to be driven on Owner's Property.

6.5 Wind Non-Obstruction Easement. 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. This easement is referred to as the "Wind Non-Obstruction Easement" and the property subject to the burden of this easement is referred to as the "Wind Non-Obstruction Easement Property." 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 ("Interference"). Owner reserves the right to erect structures on Owner's Property in compliance with all applicable laws and ordinances except as specifically limited in this Agreement. Owner

must consult with and obtain Developer's prior written approval as to the location of all structures greater than forty (40) feet in height located one thousand (1000) feet or less from any Turbine or Met Tower whether or not located on the Wind Project. Approval shall be based on whether, in Developer's sole judgment, informed by appropriate professional engineering and meteorological opinions, the proposed structures at the proposed location are likely to cause Interference.

This Wind Non-Obstruction Easement shall not be interpreted to prevent Owner from granting oil and gas exploration or production rights on Owner's Property, however no drilling rigs or other structures shall be located within three hundred (300) feet of any Turbine or within two hundred twenty-five (225) feet of any Met Tower except with Developer's prior written consent. Owner shall notify Developer as soon as Owner knows of oil and gas exploration or production plans. To the extent it does not interfere with the proposed oil or gas exploration or production, Owner shall cooperate with Developer in the exercise of Owner's oil and gas rights to minimize Interference. In the event any oil and gas related activities are commenced on Owner's Property, Owner agrees not to object to an action by Developer against a third party to reasonably protect Developer's interests hereunder. In turn, Developer agrees not to interfere with Owner's right to surface damages from oil and gas operations, exploration, drilling or granting of pipeline easements, as long as any compensation that Owner may receive shall not diminish or adversely affect any compensation due to Developer for the Wind Project Improvements.

6.6 Noise Easement. Owner grants Developer an easement for the right and privilege to generate and maintain audible noise on and above the Owner's Property at any or all times of the day or night. Developer shall limit noise levels generated by the Wind Project Improvements to less than 50 dBA as measured within 100 feet of existing occupied dwellings. This easement is referred to as the "Noise Easement" and the property subject to the burden of this easement is referred to as the "Noise Easement Property."

6.7 Overhang Easement. Owner grants Developer an easement for the right and privilege to permit the rotors of Turbines located on adjacent properties to overhang a portion of the Owner's Property identified and shown on **Exhibit B** (the "Overhang Easement Property") by no more than 175 feet at a height of at least 75 feet above the ground ("Overhang Easement"). Owner shall not interfere with the operation of Turbine rotors that overhang the Overhang Easement Property.

6.8 Met Tower Site Easement. Owner grants Developer an easement to construct, operate, replace, relocate, remove, and maintain a Met Tower and Collection Facilities on each Met Tower Site as shown on **Exhibit B**. This easement is referred to as the "Met Tower Site Easement."

6.9 Met Tower Access Easement. Owner grants Developer an easement for vehicular and pedestrian ingress and egress to and from each Met Tower ("Met Tower Access Easement") as shown on **Exhibit B** ("Met Tower Access Easement Property"). This Met Tower Access Easement is an extension of the Access Easement.

7. **Easement Purchase Price and Grant of "Most Favored Nation" Status.** Developer shall pay Owner, as consideration for this Agreement, as follows:

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Upon execution hereof, a one-time signing bonus of $2,500.

After the Commercial Operation Date, as follows:

- $5,000 per year per megawatt of manufacturer Turbine name plate capacity, increasing annually at the rate of two percent (2%) starting with the second year of commercial operation;
- $2,000 per Met Tower per year; and
- $200 per acre per year for every acre encumbered by the Wind Project Improvements as shown on **Exhibit B** (collectively, the "Annual Installment Payments").

The first Annual Installment Payment shall be paid within fifteen (15) days of the Commercial Operation Date (the "Payment Date"). Subsequent Annual Installment Payments will be made on or before the anniversary of the Payment Date of each year during the remaining term.

If, within 8 months of the date hereof, Developer enters into an easement agreement for wind development purposes with another landowner within a 10 mile radius of the Easement Properties, which such easement agreement includes higher Annual Installment Payments, then this Wind Project Easement Agreement will be amended to reflect such higher payments.

8. **Taxes.** Developer shall pay any increase in the real property taxes on Easement Properties that is directly attributable to the installation of Wind Project Improvements or to a reclassification of the Easement Properties because of creation of this Agreement. If the Wind Project Improvements are subject to real property taxes, Developer shall request that the Wind Project Improvements be separately assessed and that taxing authorities bill Developer directly for taxes attributable to the Wind Project Improvements. Developer shall not be liable for taxes attributable to facilities installed by Owner or others on the Easement Properties, to the underlying value of the Easement Properties themselves, or for any increase due to any other cause. Developer agrees to reimburse Owner for any taxes paid by Owner that are properly payable by Developer under the terms of this Agreement. To receive reimbursement, Owner must submit any real property tax bill to Developer for reimbursement within a reasonable time after Owner receives the bill from a taxing authority. The parties agree to fully cooperate to obtain any available tax refunds or tax abatements. If at any time, Developer seeks to dispute any real property taxes assessed against the Wind Project Improvements or attributable to the installation of the Wind Project Improvements and/or relating to the reclassification of the Easement Properties because of this Agreement (collectively "Assessments"), Developer may, at Developer's option, bring the appropriate proceedings (as determined by Developer in its sole and absolute discretion), in Owner's name, Developer's name, or the names of Owner and Developer for purposes of challenging such Assessment for any year(s) during the Term and any renewals or extensions of the Term. Owner hereby gives Developer the necessary authority to challenge any such Assessments on Owner's behalf, to produce information and documents (including this Agreement) as may be necessary during the course of such Assessment proceedings, and agrees to cooperate with Developer with respect to such Assessment proceedings.

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## 9. Developer's Duties and Representations

9.1 Care and Appearance. Developer shall at all times maintain the Wind Project Improvements in a neat, clean and presentable condition. Developer shall not willfully destroy Owner's Property and shall keep the Turbine Sites, Met Tower Sites, Access, Collection and Construction Easement Properties clean and free of debris created by Developer, its contractors, or others brought on to the Owner's Property by Developer. Developer shall be responsible for weed control on those portions of the Turbine Sites, Met Tower Sites, and Access Easement Properties not actively farmed by Owner or their tenant(s).

9.2 Fences and Gates. Developer shall consult with Owner and obtain Owner's approval of the location of all fences and gates that it intends to construct on Owner's Property. Developer shall repair or replace any fences, gates or cattle guards damaged or removed in connection with Developer's activities on Owner's Property, unless waived by Owner. Fences removed from the Easement Properties, if replaced, shall be re-built by Developer at its expense in mutually agreeable locations off the Turbine Sites, Met Tower Sites, and Access Easement Properties. Once completed, all replacement fences, gates and cattle guards shall be owned and maintained by Owner. To the extent possible, Developer will take into consideration the Owner's operations during periods of construction, maintenance or removal activity. Developer agrees to provide reasonable advance notice to Owner as to periods of construction, maintenance or removal activity by Developer.

9.3 Insurance and Indemnity. Developer shall maintain commercial general liability insurance in an amount not less than Two Million Dollars ($2,000,000.00) of combined single limit liability coverage. Developer shall provide certificates of this insurance coverage to Owner promptly after execution of this Agreement and thereafter upon Owner's written request.

Developer will indemnify, hold harmless and defend Owner against liability for all personal injuries, liabilities, actions and claims to the extent that they are caused by Developer, its exercise of rights granted in this Agreement or its operations or activities on Owner's Property. Developer will also pay Owner's reasonable attorneys fees in connection with an indemnified claim. This indemnity does not cover losses of rent, business opportunities, crop production, profits and the like that may result from Owner's loss of use of the Easement Properties occupied by Wind Project Improvements or affected by easement rights granted in this Agreement. This indemnity does not apply if a claim is asserted by Owner's immediate family or business entities or trusts in which Owner has an interest ("Related Parties"). Owner authorizes Developer to take reasonable safety measures to reduce the risk that the Wind Project Improvements will cause harm or injury to people, livestock, other animals and property. Nothing in this Agreement shall be construed to be a waiver by Owner or Related Parties for any claim of liability, personal injury or property damage caused by the willful misconduct or negligence of Developer.

9.4 Requirements of Governmental Agencies. Developer shall comply in all material respects with valid federal, state or local laws or regulations applicable to the Wind Project. Developer shall have the right, in its sole discretion and at its sole expense, in its name or Owner's name, to contest the validity or applicability to the Easement Properties or Wind Project of any law, ordinance, statute, order, regulation, property assessment or the like made by any governmental agency or entity. Developer shall control any such contest and Owner shall

cooperate with Developer in every reasonable way in such contest, at no out-of-pocket expense to Owner.

9.5 Mechanic's Liens. Developer shall not permit any mechanic's liens arising out of Developer's use of the Easement Properties under this Agreement to be filed against the Easement Properties. If Developer wishes to contest any such lien, Developer shall, within sixty (60) days after it receives notice of the lien, provide a bond or other security Owner may reasonably request, or remove such lien from the Easement Properties in the manner provided by applicable law.

9.6 Environmental Laws. Developer shall not violate, and agrees to indemnify, hold harmless and defend Owner against, any violation on the Easement Properties by Developer, its agents or contractors, of any Environmental Laws and will not release or dispose of any Hazardous Substances on the Easement Properties.

9.7 Remediation of Glare and Shadow Flicker. Developer agrees that should Owner experience problems with glare or shadow flicker in Owner's house for 30 hours per year or more (or such other amount of time as dictated by applicable laws or regulations) associated with the presence of the Turbines on Owner's Property or adjacent properties, Developer will promptly investigate the nature and extent of the problem and the best methods of correcting any problems found to exist. Developer at its expense, with agreement of Owner, will then promptly undertake measures such as tree planting or installation of awnings necessary to mitigate the offending glare or shadow.

9.8 Removal of Wind Project Improvements. Owner shall have no ownership or other interest in any Wind Project Improvements installed on the Easement Properties, and Developer shall have the express right, at any time and in its sole discretion, to remove one or more Turbines or other Wind Project Improvements from the Easement Properties. Owner expressly waives any statutory or common law liens to which Owner might be entitled against the Wind Project Improvements. Upon full or partial termination of any of the Easements, Developer shall remove all physical material pertaining to the Wind Project Improvements from the affected Easement Properties to a depth of thirty-six inches (36") beneath the soil surface, and restore the area formerly occupied by the Wind Project Improvements to substantially the same physical condition that existed immediately before the construction of the Wind Project Improvements (the "Removal Obligations"). If Developer fails to complete its Removal Obligations within twelve (12) months of full or partial termination of the applicable Easement, Owner may do so, in which case Developer shall reimburse Owner for costs of fulfilling Developer's Removal Obligations incurred by Owner.

9.9 Permanent Road Construction Requirements. On Easement Properties under cultivation at the time of construction, to the extent reasonably practical consistent with Developer's need to provide suitable access for delivery, erection, operation, and maintenance of the Wind Project Improvements, access roads will follow existing section lines and property lines or be oriented in a north-south or east-west direction.

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## 10. Owner's Duties and Representations

10.1 Owner's Authority. Owner is the sole owner of the Owner's Property including the Easement Properties and has the unrestricted right and authority to sign this Agreement and to grant Developer the Easements and other rights granted in this Agreement. When signed by both parties, this Agreement constitutes a valid and binding agreement enforceable against Owner in accordance with its terms.

10.2 Exclusivity. Owner agrees that Developer shall have the exclusive right to convert all of the wind resources of the Owner's Property. Owner's activities and any grant of rights Owner makes to any third party, whether located on the Easement Properties or elsewhere, shall not, now or in the future, interfere in any way with Developer's exercise of any rights granted under this Agreement.

10.3 Liens and Tenants. Owner shall provide Developer with all information reasonably required for Developer, at its expense, to identify all liens and other exceptions to Owner's fee title ownership of the Easement Properties (collectively, "Liens;" holders of Liens and tenants are referred to as "Lienholders"). Owner shall cooperate with Developer to obtain a non-disturbance agreement from each Lienholder (recorded or unrecorded, at Developer's option), which provides that the Lienholder shall not disturb Developer's possession or rights under this Agreement or terminate this Agreement or the Easements so long as Owner is not entitled to terminate this Agreement or the Easements. If Developer and Owner are unable to obtain a non-disturbance agreement from a Lienholder, Developer shall be entitled (but not obligated) to withdraw from this Agreement or to make payments in fulfillment of Owner's obligations to the Lienholder and may deduct the amount of such payments from amounts due to Owner under this Agreement. Developer's rights under this Section 10.3 are subordinate to Owner's rights under Section 6.5 above as the same relates to oil and gas exploration and/or production

10.4 Requirements of Governmental Agencies. Owner shall assist and fully cooperate with Developer, at no out-of-pocket expense to Owner, in complying with or obtaining any zoning and Owner's Property use permits and approvals, building permits, environmental impact reviews or any other governmental approvals required for the financing, construction, installation, replacement, relocation, maintenance, operation or removal of the Wind Project Improvements, including execution of applications for such approvals.

10.5 Indemnity. Owner agrees to indemnify and hold harmless Developer, its agents, employees, successors, and assigns against all personal injuries, liabilities, causes of actions, and claims, including attorneys fees to the extent caused by the willful misconduct or negligence of Owner not covered by insurance which protects Developer from loss.

10.6 Hazardous Materials. Owner represents and warrants to the best of Owner's knowledge and belief that there are no coal shafts, coal mines, abandoned wells, solid waste disposal sites, Hazardous Substances, or underground storage tanks located on the Easement Properties; that the Easement Properties do not contain levels of petroleum or other Hazardous Substances which require remediation; and, that the Easement Properties are not subject to any judicial or administrative action, investigation or order under any applicable Environmental Laws or regulations. Owner warrants that Owner has done nothing to contaminate the Easement Properties with petroleum or other Hazardous Substances. Owner agrees to indemnify and hold

Developer harmless against any claims or losses resulting from Owner's violation of any applicable Environmental Laws, except those resulting from Developer's activities on the Easement Properties.

10.7 Hunting. If Owner hunts and/or discharges firearms on and near the Easement Properties, Owner shall take such precautions as are reasonable to ensure the safety of Developer's site personnel and the protection of Wind Project Improvements on the Easement Properties during and after construction of the Wind Project.

10.8 Recreation. Owner may allow Owner's guests to use the Owner's Property and the Easement Properties, except the Turbine and Met Tower Site Properties, for recreational purposes except at times or under circumstances that adversely affect public health and safety or operation and safety of the Wind Project Improvements. If Owner or Owner's guests use snowmobiles, all-terrain vehicles, or undertake other recreational activity in the vicinity of the Easement Properties, it shall take such reasonable precautions so as to ensure the safety of Owner's guests, Developer's site personnel, and the protection of Wind Project Improvements on the Easement Properties during and after construction of the Wind Project.

## 11. Termination.

11.1 Developer's Right to Terminate. Developer shall have the right to terminate this Agreement as to all or any part of the Easement Properties, or as to any Turbine or other Wind Project Improvement, at any time, effective upon thirty (30) days' written notice to Owner.

11.2 Owner's Right to Terminate. In addition to Owner's right to terminate described in Section 4 (for Developer's failure to timely initiate construction of the Wind Project Improvements) and except as qualified by Sections 12 and 13, Owner shall have the right to terminate this Agreement and the Easements only as to those Easement Properties where: (a) a material default in the payment by Developer of Annual Installment Payments under this Agreement shall have occurred and remains uncured; (b) Owner simultaneously gives Developer and all Mortgagees and Assignees written notice of the default setting forth in reasonable detail the facts pertaining to the default and specifying the method of cure; and, (c) the default shall not have been remedied within thirty (30) days after Developer, or within ninety (90) days in the case of all Assignees and Mortgagees, receives the written notice.

Except as specifically allowed by this Section 11, this Agreement and the Easements shall not be terminable by Owner under any circumstances. Owner's sole remedy for Developer's breach of its duties under this Agreement (except its duty to timely pay Annual Installment Payments and failure to timely fulfill its Removal Obligations after termination under Section 9.8) shall be an action at law or in equity for money damages or specific performance, together with reasonable attorneys' fees if Owner prevails.

11.3 Effect of Termination. Upon full or partial termination of this Agreement, whether as to all of the Easement Properties or only as to some or parts of the Easement Properties, Developer shall: (a) provide Owner with a recordable termination of all of Developer's right, title and interest in the Easement Properties, or in those parts of the Easement Properties as to which this Agreement has been terminated, and (b) as soon as reasonably practicable after termination,

remove all Wind Project Improvements from those Easement Properties as to which this Agreement was terminated in compliance with its Removal Obligations.

## 12. Financing and Assignment by Developer

12.1 Right to Mortgage and Assign. Developer may, upon notice to Owner, without Owner's consent or approval, 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 Properties, or the Wind Project Improvements (collectively, its "Wind Project Assets"). These various security interests in all or a part of the Wind Project Assets are collectively referred to as "Mortgages" and the holders of the Mortgages, their designees and assigns are referred to as "Mortgagees." Developer's notice to Owner shall include the name and address of each Mortgagee and/or Assignee (as defined below). Developer may also, without Owner's consent, sell, convey, lease, or assign all or any portion of its Wind Project Assets on either an exclusive or a non-exclusive basis, or grant sub-easements co-easements, separate easements, leases, licenses or similar rights, however denominated (collectively, "Assignment"), to one or more persons or entities (collectively, "Assignees"). Assignees and Mortgagees shall use the Wind Project Assets only for the uses permitted under this Agreement. Assignees and Mortgagees shall have all rights and remedies allowed them under then-existing laws, except as limited by their individual agreements with Developer, provided that under no circumstances shall any Mortgagee or Assignee have any greater rights of ownership or use of Owner's Property than the rights granted to Developer in this Agreement.

12.2 Owner Obligations. Owner agrees to consent in writing to financing documents as may reasonably be required by Mortgagees. As a precondition to exercising any rights or remedies related to any alleged default by Developer under this Agreement, Owner shall give written notice of the default to each Mortgagee and Assignee at the same time it delivers notice of default to Developer, specifying in detail the alleged event of default and the required remedy. Each Mortgagee and Assignee shall have the same amount of time to cure the default as to Developer's entire interest or its partial interest in the Wind Project Assets as is given to Developer and the same right to cure any default as Developer or to remove any property of Developer, Mortgagees or Assignees located on the Easement Properties. The cure period for each Mortgagee shall begin to run at the end of the cure period given to Developer in this Agreement, but in no case shall the cure period for any Mortgagee be less than ninety (90) days after receipt of the default notice. Failure by Owner to give a Mortgagee or Assignee notice of default shall not diminish Owner's rights against Developer, but shall preserve all rights of the Mortgagee or Assignee to cure any default and to remove any property of Developer, the Mortgagee or Assignee located on the Easement Properties.

12.3 Mortgagee/Assignee Obligations. Any Mortgagee or Assignee that does not directly hold an interest in the Wind Project Assets, or whose interest is held solely for security purposes, shall have no obligation or liability under this Agreement prior to the time the Mortgagee or Assignee directly holds an interest in this Agreement, or succeeds to absolute title to Developer's interest. A Mortgagee or Assignee shall be liable to perform obligations under this Agreement only for and during the period it directly holds such interest or absolute title. Any Assignment permitted under this Agreement shall not release Developer or other assignor from obligations accruing before the date that this Agreement is assumed by the Assignee.

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12.4 Right to Cure Defaults/Notice of Defaults/Right to New Easement. To prevent termination of this Agreement, the Easements, or any partial interest in this Agreement and the Easements, Developer, any Mortgagee or Assignee shall have the right, but not the obligation, at any time to perform any act necessary to cure any default and to prevent the termination of this Agreement or any interest in the Wind Project Assets.

12.5 Extended Cure Period. If any default by Developer under this Agreement cannot be cured without obtaining possession of all or part of the Wind Project Assets, then any such default shall be deemed remedied if a Mortgagee: (a) within ninety (90) days after receiving notice from Owner as set forth in Section 12.2, acquires possession of all or part of the Wind Project Assets, or begins appropriate judicial or nonjudicial proceedings to obtain the same; (b) diligently prosecutes any such proceedings to completion; and (c) after gaining possession of all or part of the Wind Project Assets, cures defects and performs all other obligations as and when the same are due in accordance with the terms of this Agreement. If a Mortgagee is prohibited by any court or by operation of any bankruptcy or insolvency laws from commencing or prosecuting the proceedings described above, the ninety (90) day period specified above for commencing proceedings shall be extended for the period of such prohibition.

12.6 Certificates, etc. Owner shall execute estoppel certificates (certifying as to truthful matters, including without limitation that no default then exists under this Agreement, if such be the case), consents to assignment and non-disturbance agreements as Developer or any Mortgagee or Assignee may reasonably request from time to time. Owner and Developer shall cooperate in amending this Agreement from time to time to include any provision that may be reasonably requested by Developer or any Mortgagee or Assignee to implement the provisions contained in this Agreement or to preserve a Mortgagee's security interest in the Wind Project Assets

13. **Mortgagee Protection.** Any Mortgagee, upon delivery to Owner of notice of its name and address, for so long as its Mortgage is in existence shall be entitled to the following protections which shall be in addition to those granted elsewhere in this Agreement:

13.1 Mortgagee's Right to Possession, Right to Acquire and Right to Assign. A Mortgagee shall have the absolute right: (a) to assign its Mortgage; (b) to enforce its lien and acquire title to all or any portion of the Wind Project Assets by any lawful means; (c) to take possession of and operate all or any portion of the Wind Project Assets and to perform all obligations to be performed by Developer under this Agreement, or to cause a receiver to be appointed to do so; and (d) to acquire all or any portion of the Wind Project Assets by foreclosure or by an assignment in lieu of foreclosure and thereafter without Owner's consent to assign or transfer all or any portion of the Wind Project Assets to a third party. A Mortgagee which assigns or transfers Wind Project Assets to a third party shall notify Owner of the name and address of the Assignee or transferee.

13.2 Opportunity to Cure.

(a) During any period of possession of the Easement Properties by a Mortgagee (or a receiver requested by a Mortgagee) and/or while any foreclosure proceedings instituted by a Mortgagee are pending, the Mortgagee shall pay or cause to be paid the fees and all other monetary charges payable by Developer under this Agreement which have accrued

and are unpaid at the commencement of the period and those which accrue thereafter during the period. Following acquisition of all or a portion of the Wind Project Assets by the Mortgagee as a result of either foreclosure or acceptance of an assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale, this Agreement shall continue in full force and effect and the Mortgagee or party acquiring title to Developer's Wind Project Assets shall, as promptly as reasonably possible, commence the cure of all defaults under this Agreement and thereafter diligently process such cure to completion, whereupon Owner's right to terminate this Agreement based upon such defaults shall be deemed waived; provided, however, that the Mortgagee or party acquiring title to Developer's Easement shall not be required to cure those defaults which are not reasonably susceptible of being cured or performed by such party ("non-curable defaults"). Non-curable defaults shall be deemed waived by Owner upon completion of foreclosure proceedings or acquisition of Developer's interest in this Agreement by such party.

(b) Any Mortgagee or other party who acquires Developer's interest in the Wind Project Assets pursuant to foreclosure or assignment in lieu of foreclosure shall not be liable to perform the obligations imposed on Developer by this Agreement incurred or accruing after the party no longer has ownership or possession of the Wind Project Assets.

(c) Neither the bankruptcy nor the insolvency of Developer shall be grounds for terminating this Agreement as long as all Annual Installment Payments and all other monetary charges payable by Developer under this Agreement are paid by the Mortgagee in accordance with the terms of this Agreement.

13.3 New Easement.

(a) If this Agreement terminates because of Developer's default, if the Easements are foreclosed, or if this Agreement is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditor's rights and, within ninety (90) days after such event, Developer or any Mortgagee or Assignee shall have arranged to the reasonable satisfaction of Owner for the payment of all fees or other charges due and payable by Developer as of the date of such event, then Owner shall execute and deliver to Developer or such Mortgagee or Assignee or to a designee of one of these parties, as the case may be, new easements to the Easement Properties which (i) shall be for a term equal to the remainder of the Term before giving effect to such rejection or termination; (ii) shall contain the same covenants, agreements, terms, provisions and limitations as this Agreement (except for any requirements that have been fulfilled by Developer or any Mortgagee or Assignee prior to rejection or termination of this Agreement); and, (iii) shall include that portion of the Wind Project Assets in which Developer or such other Mortgagee or Assignee had an interest on the date of rejection or termination.

(b) After the termination, rejection or disaffirmation of this Agreement and during the period thereafter during which any Mortgagee shall be entitled to enter into new easements for the Easement Properties, Owner will not terminate the rights of any Assignee unless in default under its Assignment.

(c) If more than one Mortgagee makes a written request for new easements pursuant to this provision, the new easements shall be delivered to the Mortgagee requesting such

new easements whose Mortgage is prior in lien, and the written request of any other Mortgagee whose lien is subordinate shall be void and of no further force or effect.

(d) The provisions of this Section 13 shall survive the termination, rejection or disaffirmation of this Agreement and shall continue in full force and effect thereafter to the same extent as if this Section 13 were a separate and independent contract made by Owner, Developer and each Mortgagee, and, from the effective date of such termination, rejection or disaffirmation of this Agreement to the date of execution and delivery of such new easements, such Mortgagee may use and enjoy the Easement Properties without hindrance by Owner or any person claiming by, through or under Owner; provided that all of the conditions for the new easements as set forth above are complied with.

13.4 Mortgagee's Consent to Amendment, Termination or Surrender. Notwithstanding any provision of this Agreement to the contrary, the parties agree that so long as there exists an unpaid Mortgagee, this Agreement shall not be modified or amended, and Owner shall not accept a surrender, cancellation or release of all or any part of the Wind Project Assets from Developer, prior to expiration of the Term without the prior written consent of the Mortgagee. This provision is for the express benefit of and shall be enforceable by each Mortgagee as if it were a party named in this Agreement.

13.5 No Merger. There shall be no merger of this Agreement or of the Easements with the fee estate in the Easement Properties by reason of the fact that this Agreement or any interest in the Easements may be held, directly or indirectly, by or for the account of any person or persons who shall own any interest in the fee estate. No merger shall occur unless and until all persons at the time having an interest in the fee estate in the Easement Properties and all persons (including each Mortgagee) having an interest in this Agreement or in the estate of Owner and Developer shall sign and record a written instrument effecting such merger.

13.6 Liens. On the commencement of this Agreement, the Easement Properties shall be free and clear of all monetary liens other than those expressly approved by Developer. Thereafter, any assignment of this Agreement, mortgage, deed of trust or other monetary lien placed on the Easement Properties by Owner, or permitted by Owner to be placed or to remain on the Easement Properties, shall be subject to this Agreement, to any Assignment or Mortgage then in existence on the Wind Project Assets as permitted by this Agreement, to Developer's right to encumber the Wind Project Assets, and to any and all documents executed or to be executed by Owner in connection with Developer's development of all or any part of the Easement Properties. Owner agrees to cause any monetary liens placed on the Easement Properties by Owner in the future to incorporate the conditions of this Section 13.6.

13.7 Further Amendments. At Developer's request, Owner shall amend this Agreement to include any provision which may reasonably be requested by a proposed Mortgagee; provided, however, that such amendment shall not impair any of Owner's rights under this Agreement or increase the burdens or obligations of Owner under this Agreement. Upon the request of any Mortgagee, Owner shall execute any additional instruments reasonably required to evidence such Mortgagee's rights under this Agreement.

14. **Notices.** All notices or other communications required or permitted by this Agreement 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:

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

Telephone:

Developer: Minnesota Power
30 West Superior Street
Duluth MN 55802
Attn: Renewable Business Operations Manger
Telephone: 218-722-2641

Any Assignee or Mortgagee:

The address of the Assignee or Mortgagee as shown in the written notice to Owner of the Assignment or Mortgage.

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.

15. **Miscellaneous**

15.1 Unavoidable Delays. If either party is delayed, hindered in or prevented from performing any act required under this Agreement by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, natural disasters, war, civil strife or other violence, or other cause beyond such party's control, the affected party, upon giving notice to the other party, shall be excused from performing the act (except payment of consideration) for the period of the delay. The affected party shall use its reasonable efforts to avoid or remove the causes of nonperformance and shall continue performance whenever the causes for nonperformance are removed.

15.2 Runs With the Owner's Property. The Easements and any rights or obligations in this Agreement shall run with the Owner's Property affected and shall be binding on, and inure to the benefit of, Owner and Developer, Mortgagees, Assignees, and their respective successors and assigns, heirs, personal representatives, tenants, or persons claiming through them.

15.3 Memorandum. Owner and Developer shall execute in recordable form, and Developer at its expense shall then record, a memorandum of this Agreement satisfactory in form and substance to Developer and Owner. Owner consents to the recordation of the interest of any Mortgagee or Assignee in the Easement Properties.

15.4 Entire Agreement/Amendments. This Agreement constitutes the entire agreement between Owner and Developer respecting its subject matter and replaces and supersedes any prior agreements. Any agreement, understanding or representation respecting the subject matter

of this Agreement not expressly set forth in this Agreement or a later writing signed by both parties, is null and void. This Agreement and the Easements shall not be modified or amended except in a writing signed by the parties or their respective successors in interest.

The parties understand that following construction of the Wind Project Improvements it will be necessary to substitute **Exhibit C** for **Exhibit B.** The parties agree to cooperate in this substitution of exhibits and in executing any additional agreements or amendments reasonably needed by the parties for their business purposes so long as they do not adversely affect the rights of either party or violate the terms and spirit of this Agreement.

15.5 Legal Matters. This Agreement shall be governed by and interpreted in accordance with the laws of the State of North Dakota.

15.6 Partial Invalidity. Should any provision of this Agreement be held, in a final and unappealable decision by a court of competent jurisdiction, to be either invalid, void or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect, unimpaired by the holding. Notwithstanding any other provision of this Agreement, the parties agree that in no event shall the Term be for longer periods than the longest periods permitted by applicable law.

15.7 Tax Credits. If under applicable law Developer becomes ineligible for any tax credit, benefit or incentive for alternative energy expenditure established by any local, state or federal government, then, at Developer's option, Owner and Developer shall amend this Agreement or replace it with a different instrument so as to convert Developer's interest in the Easement Properties to a substantially similar interest that makes Developer eligible for such tax credit, benefit or incentive, so long as Owner's interests are not impaired.

15.8 Approvals. No approval required by this Agreement shall be unreasonably withheld (except in instances where this Agreement specifically permits a party to act in its sole discretion), conditioned or delayed. Unless a longer or shorter time is specified, all approvals required of either party shall be given or refused in writing within ten (10) days after receipt of the request for approval. Any delay of a requested approval longer than ten (10) business days shall be deemed an approval.

15.9 Lateral Support. Developer shall have and exercise the right of subjacent and lateral support for Wind Project Improvements on the Easement Properties to whatever extent is necessary for the safe construction, operation and maintenance of Wind Project Improvements. Owner expressly covenants that Owner shall not excavate so near the sides of or underneath the Wind Project Improvements as to undermine or otherwise adversely affect their stability.

15.10 Costs of Future Documentation. Developer or any Mortgagee or Assignee requesting or receiving from Owner additional, new or revised documents under the terms of this Agreement shall pay Owner's reasonable legal fees and other out of pocket expenses related to preparation, review, execution and delivery of the documents requested or received.

15.11 Counterparts. This Agreement may be executed in more than one counterpart, including facsimiles, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.



156

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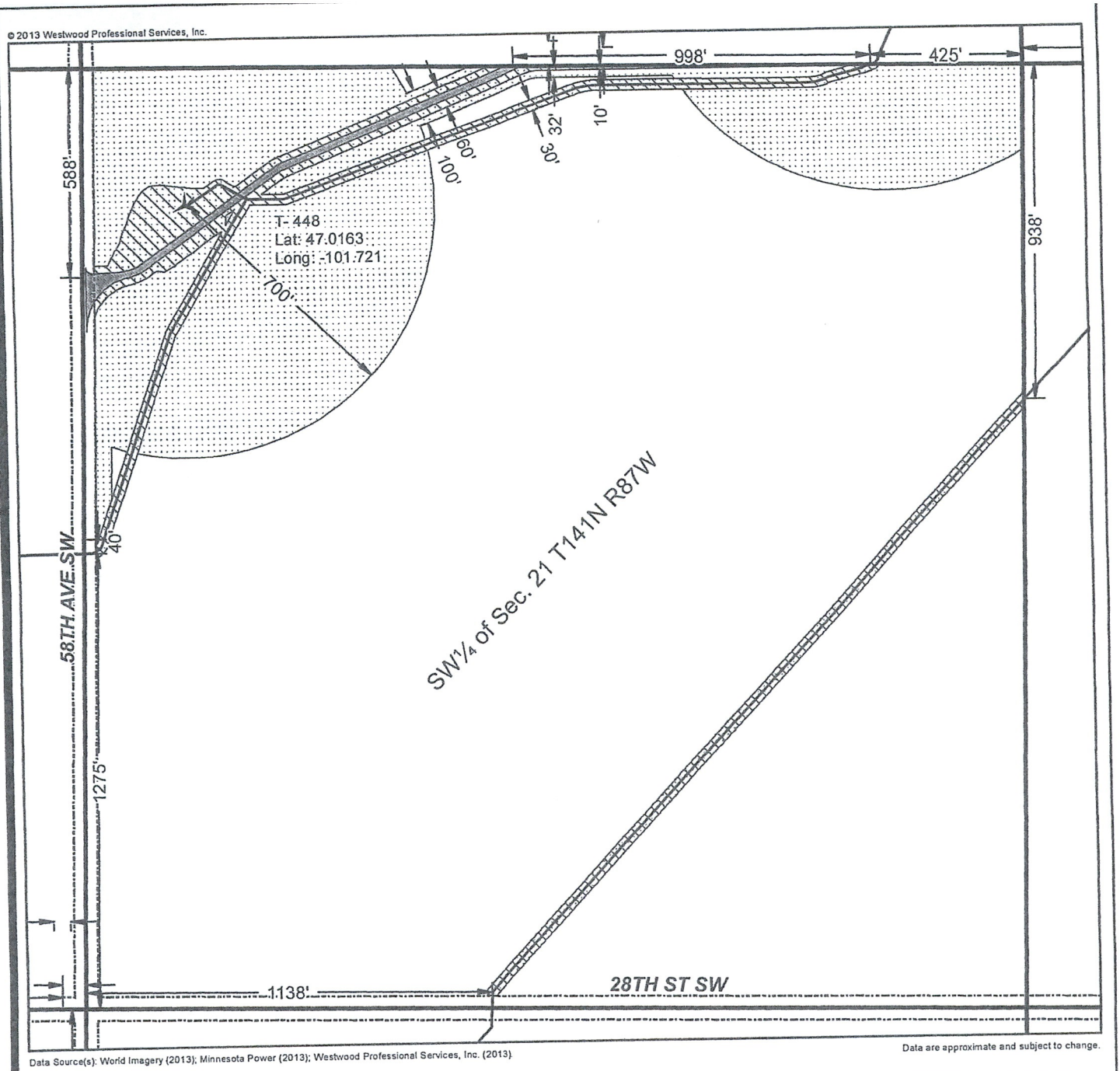


Data Source(s): World Imagery (2013); Minnesota Power (2013); Westwood Professional Services, Inc. (2013).

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

| SW¼ of Sec. 21 T141N R87W | |
|---|---|
| Wind Project Improvement Easement Area | 6.44 Acres |

N

0 400 Feet

B4 - 46
Rev. D

Westwood Professional Services, Inc.
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Eden Prairie, MN 55344

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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:\0001265.00\GIS\130903\B4_000-Rev D-BW.mxd 9/3/2013 2:24:25 PM

159

© 2013 Westwood Professional Services, Inc.




Renter: Self Keith Kessler
Address: 6001 26th St SW
City: Glen Ullin, State ND Zip: 58631
Phone: (701) 873 - 5303
Grazing from: _____ to _____

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

| N½SE¼ of Sec. 15 T141N R87W | |
|---|---|
| Wind Project Improvement Easement | 1.72 Acres |

N

0 400 Feet

B4 - 27.1
Rev. A

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# Bison 4

Oliver County, ND

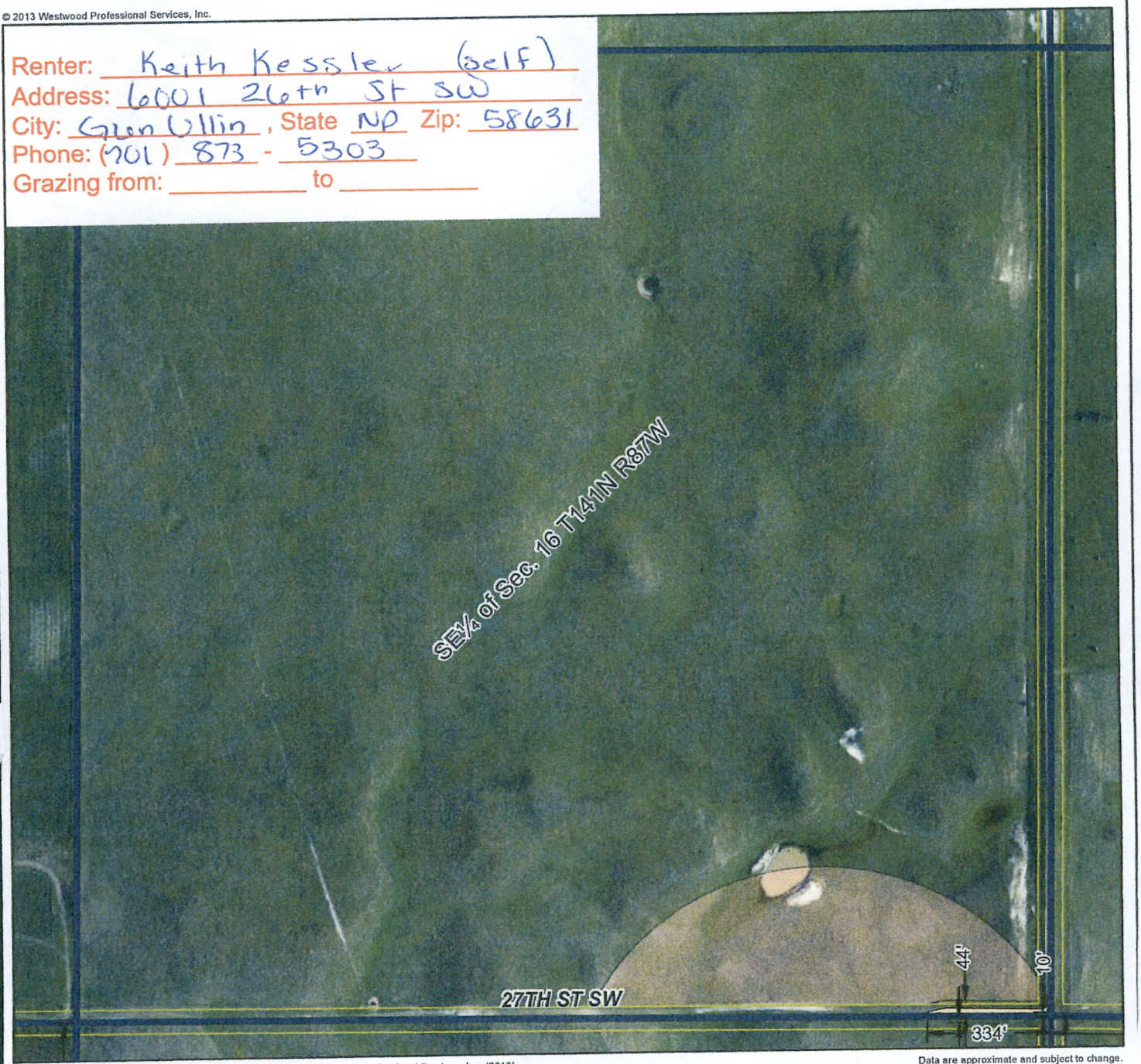
## Exhibit B - Easement Plan

Map Document: P:\00012\30820\Bison4_EasementPlan_SelectedQSecs_130820_Pg27-1.mxd 8/20/2013 10:36:51 AM

167

© 2013 Westwood Professional Services, Inc.

Renter: Keith Kessler (self)
Address: 6001 26th St SW
City: Glen Ullin, State ND Zip: 58631
Phone: (701) 873 - 5303
Grazing from: _____ to _____




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

| SE¼ of Sec. 16 T141N R87W | |
|---|---|
| Wind Project Improvement Easement Area | 0.06 Acres |

N

0 400 Feet

B4 - 23
Rev. C

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# Bison 4

Oliver County, ND

## Exhibit B - Easement Plan

Map Document: P:\00012\828\B4_000-Rev C-Aerial.mxd 8/28/2013 7:06:56 PM

© 2013 Westwood Professional Services, Inc.




Renter: Self Keith Kessler
Address: 6001 26th St SW
City: Glenullin, State ND Zip: 58631
Phone: (701) 873 - 5303
Grazing from: _____ to _____

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

| SE¼ of Sec. 21 T141N R87W | |
|---|---|
| Wind Project Improvement Easement Area | 0.87 Acres |

N

0 400 Feet

B4 - 47
Rev. B

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# Bison 4

Oliver County, ND

## Exhibit B - Easement Plan

Map Document: P:\10\00126\00820\Bison4_EasementPlan_Surveyed_130820.mxd 8/26/2013 6:30:03 PM

17 17

© 2013 Westwood Professional Services, Inc.




Renter: (Self) Keith Kessler
Address: 6001 26th St SW
City: Glen Ullin, State ND Zip: 58631
Phone: (701) 873 - 5303
Grazing from: _____ to _____

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

| NE¼ of Sec. 21 T141N R87W | |
|---|---|
| Wind Project Improvement Easement Area | 5.25 Acres |

N

0 400 Feet

B4 - 45
Rev. C

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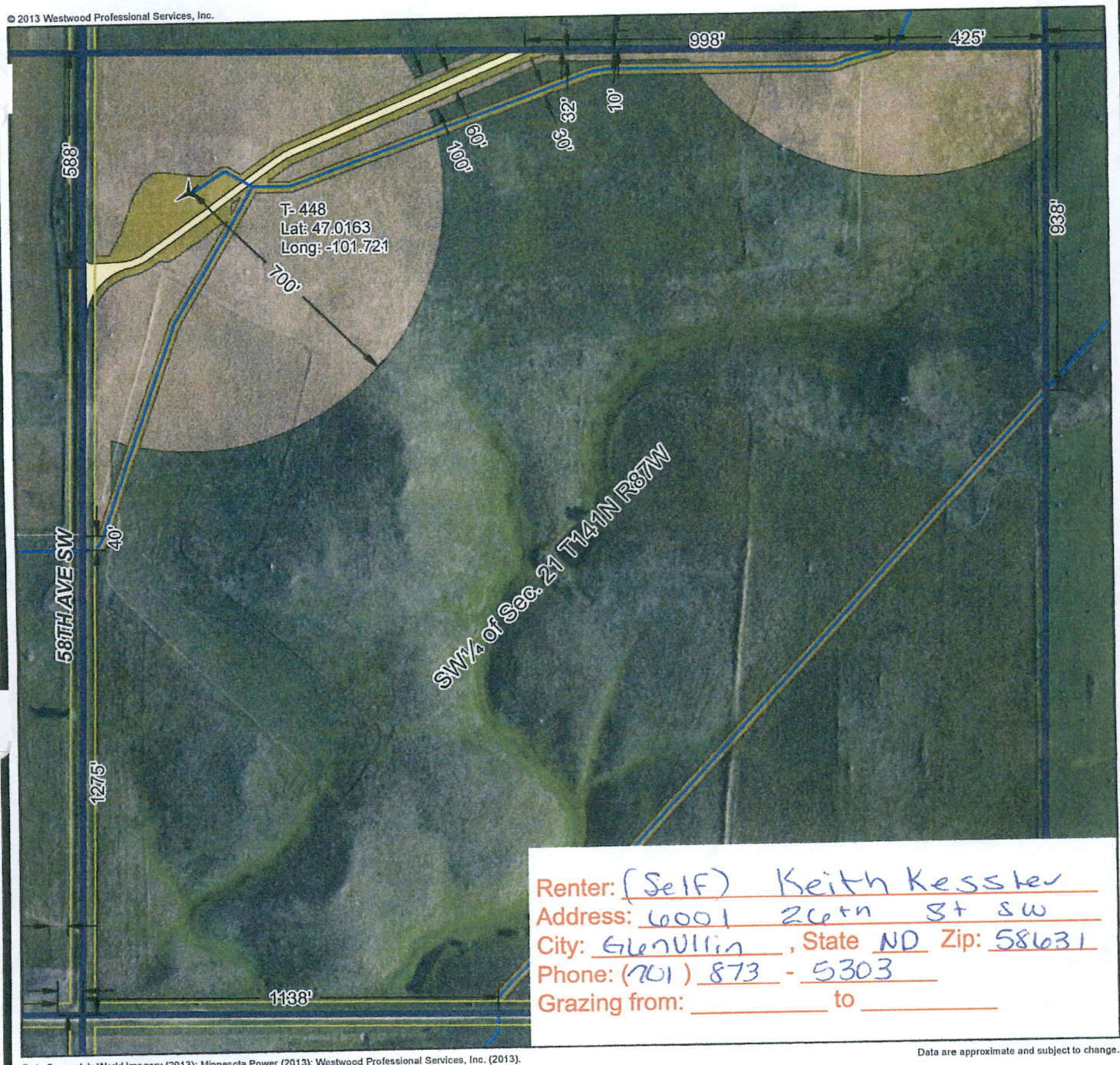
# Bison 4

Oliver County, ND

## Exhibit B - Easement Plan

Map Document: P:\0001261\28\B4_000-Rev C-Aerial.mxd 8/28/2013 7:07:21 PM




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

| SW¼ of Sec. 21 T141N R87W | |
|---|---|
| Wind Project Improvement Easement Area | 6.44 Acres |

N

0 400 Feet

B4 - 46
Rev. C

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Eden Prairie, MN 55344

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# Bison 4

Oliver County, ND

## Exhibit B - Easement Plan

Map Document: P:\0001265.81\B4_000-Rev C-Aerial.mxd 8/28/2013 7:08:11 PM

**Bison 4 Weekly Construction Report**

**Case No. PU-13-127**

**Week Ending 03/16/14**

Bison 4 Substation main power transformer delivered to site.

Wanzek sub contractors mobilizing heavy equipment to site.

**Work Force**

Minnesota Power – 1

Wanzek – 0

Michels

60 PU-13-127 Filed: 3/18/2014 Pages: 1
Allete 210MW Bison 4 Wind Project - progress report - week ending 3-16-2014

Allete, Inc.

60 3-16-14

174

## Bison 4 Weekly Construction Report

## Case No. PU-13-127

## Week Ending 07/06/14

Wanzek is performing earthwork activities on sites 453-457. Backfilling foundations 438-445, and foundation rebar work on sites 445-448.

Gravel is being installed on crane pads and roads on the west side of the project.

Ongoing county road maintenance and dust control.

---

Siemens began turbine deliveries in Area 2 and they continue to work on erection in Area 1.

**Work Force**

Minnesota Power – 7

Wanzek – 182

Siemens – 15

194

75 PU-13-127 Filed: 7/11/2014 Pages: 1
Allete 210MW Bison 4 Wind Project - progress report - week ending 7-6-2014

Allete, Inc.

75 7-6-14

# Bison 4 Weekly Construction Report

## Case No. PU-13-127

## Week Ending 07/27/14

Wanzek completed all foundation excavations and they continue to work on cranes pads 439-444. Backfilling foundations 442 – 445 and finishing roads between 453 and 454.

Gravel is being installed on crane pads and roads on the west side of the project.

Ongoing county road maintenance and dust control.

---

Siemens received tower components for sites 430 – 432 and 415-416, they also continue erection activities in Area 1.

**Work Force**

Minnesota Power – 8

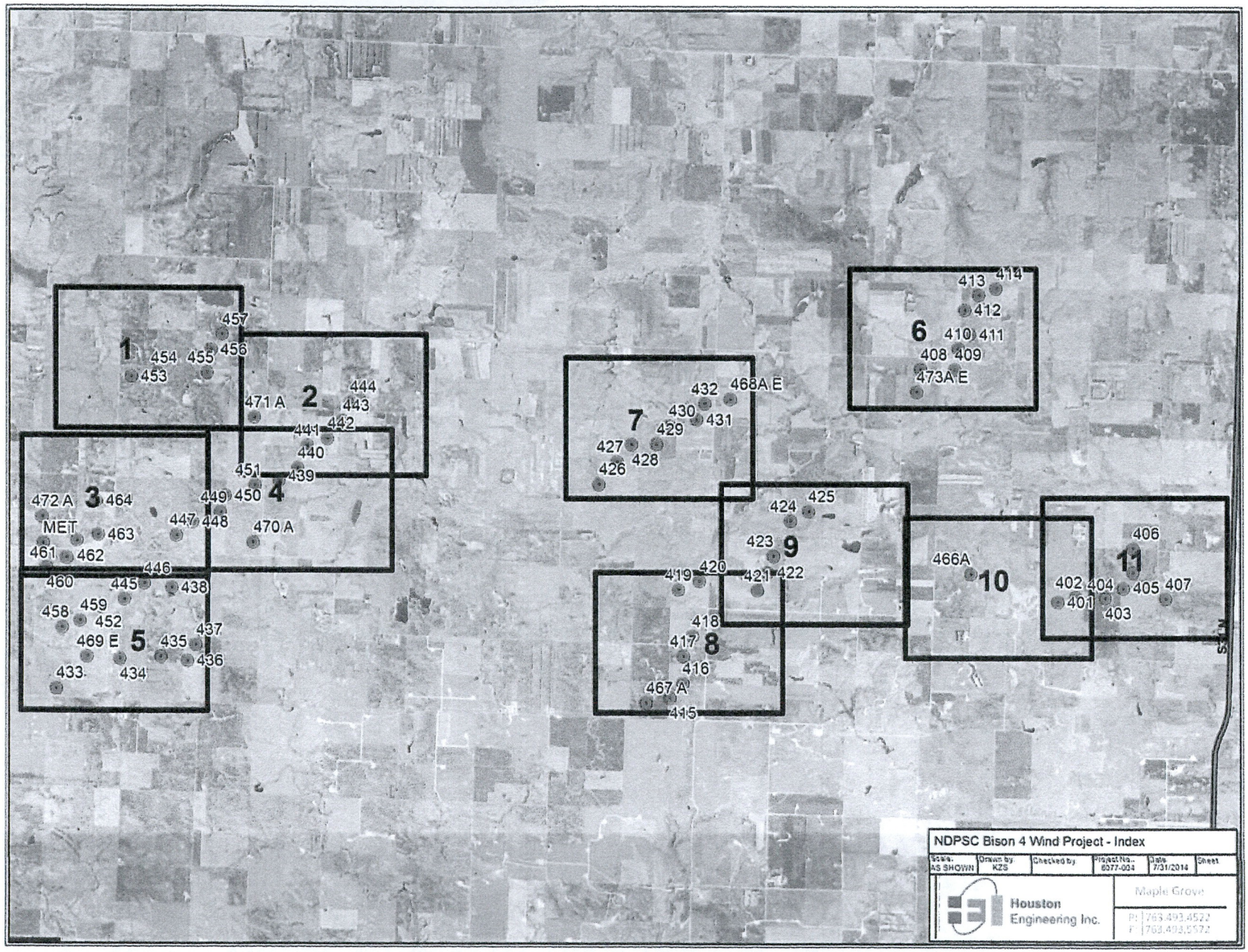
Wanzek – 160

Siemens – 15

199

7-27-14

hoe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467 A
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403
NDPSC Bison 4 Wind Project - Index
Houston Engineering Inc.
Maple Grove

## Bison 4 Weekly Construction Report

## Case No. PU-13-127

## Week Ending 08/03/14

Foundation concrete work is complete, one foundation left to backfill.

Gravel is being installed on crane pads and roads on the west side of the project.

Ongoing county road maintenance and dust control.

---

Siemens received tower components for sites 417-420, and they have one tower left to erect in Area 1.

**Work Force**

Minnesota Power – 7

Wanzek – 160

Siemens – 14

# Bison 4 Weekly Construction Report

## Case No. PU-13-127

## Week Ending 08/17/14

Collector system is complete.

Gravel is being installed on the last few crane pads.

Ongoing county road maintenance and dust control.

---

Erection completed 4 of the 7 towers in Area 4

**Work Force**

Minnesota Power – 6

Wanzek – 135

Siemens – 14

207

8-17-14

# Bison 4 Weekly Construction Report

## Case No. PU-13-127

## Week Ending 08/24/14

Balance of Plant construction is complete

Ongoing county road maintenance, dust control, and erosion control maintenance.

---

Siemens added night shift, erection crew will run around the clock.

14 of 64 turbines have been fully erected.

**Work Force**

Minnesota Power – 6

Wanzek – 125

Siemens – 14

208

8-24-14

# Bison 4 Weekly Construction Report

## Case No. PU-13-127

## Week Ending 08/31/14

Balance of Plant construction is complete

Ongoing county road maintenance, dust control, and erosion control maintenance.

---

19 of 64 turbines have been fully erected.

Turbine parts are being delivered to the West side of the project at a rate of 4 per week.

**Work Force**

Minnesota Power – 6

Wanzek – 125

Siemens – 19

209

82 PU-13-127 Filed: 9/5/2014 Pages: 4
Allete 210MW Bison 4 Wind Project - progress reports - weeks ending 8-10, 8-17, 2-24, 8-13-2014

Allete, Inc.

82 8-31-14

# Bison 4 Weekly Construction Report

## Case No. PU-13-127

## Week Ending 09/07/14

Balance of Plant construction is complete

Ongoing county road maintenance, dust control, and erosion control maintenance.

MET tower erection is complete.

---

23 of 64 turbines have been fully erected.

Turbine parts are being delivered to the West side of the project at a rate of 4 per week.

**Work Force**

Minnesota Power – 6

Wanzek – 126

Siemens – 22

211

9-7-14

## Bison 4 Weekly Construction Report

## Case No. PU-13-127

## Week Ending 09/14/14

Ongoing county road maintenance, dust control, and erosion control maintenance.

---

24 of 64 turbines have been fully erected.

Limited erection activities, the main crane was torn down and relocated to Area 2.

Turbine parts are being delivered to the West side of the project at a rate of 4 per week.

**Work Force**

Minnesota Power – 6

Wanzek – 126

Siemens – 19

212

# Bison 4 Weekly Construction Report

## Case No. PU-13-127

## Week Ending 09/21/14

Ongoing county road maintenance, dust control, and erosion control maintenance.

---

25 of 64 turbines have been fully erected.

**Work Force**

Minnesota Power – 6

Wanzek – 126

Siemens – 19

213

9-21-14

## Bison 4 Weekly Construction Report

## Case No. PU-13-127

## Week Ending 09/28/14

Ongoing county road maintenance, dust control, and erosion control maintenance.

---

26 of 64 turbines have been fully erected.

**Work Force**

Minnesota Power – 6

Wanzek – 115

Siemens – 19

215

# Bison 4 Weekly Construction Report

## Case No. PU-13-127

## Week Ending 10/05/14

Ongoing county road maintenance, dust control, and erosion control maintenance.

---

32 of 64 turbines have been fully erected.

**Work Force**

Minnesota Power – 5

Wanzek – 115

Siemens – 18

217

10-5-

## Bison 4 Weekly Construction Report

## Case No. PU-13-127

## Week Ending 10/12/14

Ongoing county road maintenance, dust control, and erosion control maintenance.

---

Tear down main crane and relocate to West side of project.

Night shift started on 10/01/14

35 of 64 turbines have been fully erected.

**Work Force**

Minnesota Power – 5

Wanzek – 125

Siemens – 18

218

# Bison 4 Weekly Construction Report

## Case No. PU-13-127

## Week Ending 10/19/14

Ongoing county road maintenance, dust control, and erosion control maintenance.

---

Crews are working 2 – 12 hour shifts

39 of 64 turbines have been fully erected.

**Work Force**

Minnesota Power – 5

Wanzek – 115

Siemens – 18

219

10-19-14

## Bison 4 Weekly Construction Report

## Case No. PU-13-127

## Week Ending 10/26/14

Ongoing county road maintenance, dust control, and erosion control maintenance.

---

Crews are working 2 – 12 hour shifts

42 of 64 turbines have been fully erected.

**Work Force**

Minnesota Power – 6

Wanzek – 115

Siemens – 19

220

# Bison 4 Weekly Construction Report

## Case No. PU-13-127

## Week Ending 11/02/14

Ongoing county road maintenance.

---

Crews are working 2 – 12 hour shifts

44 of 64 turbines have been fully erected.

**Work Force**

Minnesota Power – 5

Wanzek – 115

Siemens – 19

222

11-2-14

## Bison 4 Weekly Construction Report

## Case No. PU-13-127

## Week Ending 11/09/14

Ongoing county road maintenance.

---

Crews are working 2 – 12 hour shifts

49 of 64 turbines have been fully erected.

**Work Force**

Minnesota Power – 50

Wanzek – 103

Siemens – 30

223

90 PU-13-127 Filed: 11/18/2014 Pages: 2
Allete 210MW Bison 4 Wind Project - progress reports - weeks ending 11-2 & 11-9-2014

Allete, Inc.

90 11-9-14

# Bison 4 Weekly Construction Report

## Case No. PU-13-127

## Week Ending 11/16/14

Crews are working 2 – 12 hour shifts

54 of 64 turbines have been fully erected.

**Work Force**

Minnesota Power – 5

Wanzek – 125

Siemens – 35

226

11-16-1

On May 23rd 2014, Bauchaus Fencing removed a fence on Sec. 15 without notification which is stated in our easement, letting our cattle out to roam. We had graduation reception at our home. 4 more times over the summer of 2014 they let our cattle out.

On Nov. 21st 2014 I called Scott Monroe and told him we were going out of town the week of the 24TH. And I did not want anyone in our land that week because, we had to check cattle every day to make sure they don't let them out or let gates open again. When we came home on the 27th and checked cows and they removed a ½ mile of fence and rebuilt where our cow were in.

Washout in pasture and hay land were they put underground in need of fill dirt they won't do anything.

Fencing, they never asked us where we wanted the fence to go. It was put were ever their contractor wanted it. We agreed it would all be red brand wire and it is not. The wire is spliced all over unacceptable some wire has clips hanging off it. This tells me it was used. We wanted the north fence on SW section 21 surveyed and the fence on our property. I told Scott that in 2014 already, some fence posts are on the wrong side of the wire. Temp fence was pulled and holes were never filled. They will be liable if animals are injured.

Grass seeding of electrical line, was to be seeded as existing grass or alfalfa, not broom grass, some native grass wasn't seeded till end of July 2015 not acceptable to late.

Rock in the ditches and dirt were to be removed last year still there, hit rock 9/27/2015 with rotary mower broke mower to be paid by Minn Power. Rocks around culverts in ditches need removed. Rocks are not picked around tower or grass seeding.

Crane Walk Easement: Minn Power wanted to move a crane on ½ section of 16 we said no, they said they would force us to sign because they lease our land and can get it court ordered. They offered $2500 per quarter and ½ mile of new fence for a 50 ft. easement, we signed it. They said they would stay on the hills because it was wet, they went through the lowest land route, leaving ruts, I asked for a compaction test in spring of 2015. This had not happened. There is still wood left from pads, they should have padded more then there would not be ruts. Also they used well over the 50 foot easement. Ruts need filled in and rocks were dug up still not removed.

At the public hearing in Center before construction I brought forward concerns of fences, roads, grass seeding, weeds and 2 towers that over hangs our land. They have fenced us out of our property and gave it to the neighbors. Also my wife and I met with Scott and Wade and asked about these 2 towers creating a problem with fences or anything else and we were told it would not affect us at all. That was before we signed the easement now they tell us this is the way it is. They should have put the tower one way or the other to a void this.

227

11-2-1

I have gone over the punch list with Scott about every 6 weeks; he says he'll get back to me but that did not happen.

In summary when Minn Power Scott Monroe fist came for a land lease he sat at our table and said when an if they plan a wind farm they would ask our input with roads and tower placement those were the 1st of many lies.

I contacted PSC in July. I'm sorry it's been this long. But we were hoping and trying to work it out with Minn Power but they do not return phone calls.

## Bison 4 Weekly Construction Report

## Case No. PU-13-127

## Week Ending 11/23/14

Crews are working 2 – 12 hour shifts

57 of 64 turbines have been fully erected.

**Work Force**

Minnesota Power – 5

Wanzek – 120

Siemens – 40



91 PU-13-127 Filed: 11/25/2014 Pages: 2
Allete 210MW Bison 4 Wind Project - progress reports - weeks ending 11-16 & 11-23-2014

Allete, Inc.

91 11-23-14

# STATUS SUMMARY REPORT # 2 November 21st, 2014

## 210 MW Bison 4 Wind Project, Minnesota Power (PSC Case No. PU-13-127)

Permit Compliance Review

NDPSC Contract No.: PU-688-13-EE

Reporting Period: August 1st, 2014 -- November 21st, 2014
Prepared By: Houston Engineering, Inc. / Emmy Baskerville, Environmental Scientist and Bart Schultz, Project Manager

**General:**

Houston Engineering, Inc. (HEI) was contractually hired by the North Dakota Public Services Commission (NDPSC) to complete the construction inspection activities, as part of the 210 MW Bison 4 Wind Project, (PSC Case No. PU-13-127). The following is a summary of the work completed to date and the anticipated timeframe for the completion of the permit compliance review. Two environmental compliance site visits have been completed during construction, and one additional site visit is planned after construction is complete, with an estimated timeframe of Spring 2015. This field inspection report is for the second site visit which occurred on October 22nd, 2014.

**Summary of Activities / Items Completed to Date:**

HEI met Daniel McCourtney from Minnesota Power on site. Upon arrival on site, we observed dust control watering activities on the gravel roads. We traveled throughout the Bison 4 complex and identified and observed sites which were actively under construction as well as sites where construction and restoration had been completed.

The following completed structures were observed during our site visit: 421, 422, 423, 424, 425, 401, 402, 403, 404, 405, 426-431, 434, 463, 462, 461, 439, 444, 417, 418 & the weather structure (MET). Turbines 457, 456, 460, 433, 452, 445, were under construction at the time of our visit, however conditions on the day of our site visit were too windy and no active construction was observed.

The focus of our site visit was on turbines that were constructed adjacent to archaeological / historic sites and wetlands to verify their siting compliance. Additionally, tree clearing, erosion control, dust control, and restoration activities were also the focus.

**Compliance**

The following turbines were visited to observe their construction relative to their vicinity to known archaeological / historic sites: 424, 425, 401, 402, 431, 463, 434, & 444. Each of these turbines were constructed outside of the site limits. The archaeological / historic boundary was marked with permanent fence posting within each of these sites. See photos. No construction within these archaeological / historic site limits was observed.

Turbines 442 and 443 were reviewed to determine their siting compliance relative to the identified wetlands in the area. All turbines were constructed outside the limits of the wetlands, and no wetland impacts were observed.

Biorolls and erosion control seeding was observed within the areas of turbines 421, 424, 402, 405, 426-431 & 439. No erosion or sedimentation issues were observed throughout the site. All areas observed under construction had appropriately placed erosion control measures, which included biorolls, silt fencing and hydroseed.

Minor rutting, likely from the construction equipment was noted on the roadways. This is not unusual given that construction is actively underway in many of these areas. We will observe these areas when construction is complete, and verify that roadways are returned to their pre-construction condition.

**Future Activities for the next reporting period:**

HEI will perform the final permit compliance inspection once construction is complete. This is anticipated to be Spring 2015.

# Bison 4 Weekly Construction Report

## Case No. PU-13-127

## Week Ending 11/30/14

Crews are working 2 – 12 hour shifts

61 of 64 turbines have been fully erected.

**Work Force**

Minnesota Power – 5

Wanzek – 114

Siemens – 38

232

11-30-14

# Bison 4 Weekly Construction Report

## Case No. PU-13-127

## Week Ending 12/07/14

Erection Complete on 12/05/2014

**Work Force**

Minnesota Power – 4

Wanzek – 68

Siemens – 38

93 PU-13-127 Filed: 12/15/2014 Pages: 2
Allete 210MW Bison 4 Wind Project - progress reports - weeks ending 11-30 & 12-7-2014

Allete, Inc.

233

93 12-7

minnesota power
AN ALLETE COMPANY

30 west superior street / duluth, minnesota 55802-2093 / fax: 218-723-3955 /www.allete.com

*David R. Moeller*
*Senior Attorney*
*218-723-3963*
*dmoeller@allete.com*

March 20, 2015

**VIA EMAIL:** NDPSC@ND.GOV

Mr. Darrell Nitschke
Executive Secretary
North Dakota Public Service Commission
600 E. Boulevard Ave., Dept. 408
Bismarck, ND 58505-0480

RE: Bison 4 Wind Project
Oliver/Morton Counties
Siting Application
Case No. PU-13-127

Dear Mr. Nitschke:

Enclosed please find Minnesota Power's response to the sound issued raised by Mr. John Aasmundstad regarding one of the Bison 4 turbines. Please note that Minnesota Power is providing Mr. Aasmundstad a copy of the sound study completed by Barr Engineering which identifies that the turbine is in compliance with North Dakota Administrative Code 69-06-08-01(4).

Please do not hesitate to contact me with any questions or concerns that you have with regard to this matter. Minnesota Power will continue to update the PSC on any discussions with Mr. Aasmundstad.

Yours truly,

David R. Moeller

DRM:sr
Attach

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96 PU-13-127 Filed 03/20/2015 Pages: 24
Response to John Aasmundstad re sound study
Allete, Inc.
David Moeller

3-20-15

minnesota power
ALLETE COMPANY

Bradley W. Oachs
Chief Operating Officer
Fax 218-723-3989
E-mail boachs@mnpower.com

**VIA PERSONAL DELIVERY**

March 23, 2015

John and Joyce Aasmundstad
5895 28th Street S.W.
Beulah, ND 58523

Re: Sound Study
Minnesota Power – Bison 4 Wind Farm

Dear Mr. and Mrs. Aasmundstad:

Your concerns with regard to Minnesota Power's recent installation and commissioning of a wind turbine located on property to the northwest of your property have been brought to my attention. We refer to the wind turbine as T463; for simplicity, I will use that same reference in this letter. We are sorry that you are unhappy with the sound level that you are experiencing at your home. We take this matter very seriously and appreciate the opportunity to address your concerns.

We understand that you initially shared your concerns with the North Dakota Public Services Commission (the "PSC") in late December. We have thoroughly reviewed this matter and appreciate the ongoing conversations that you have had with our land agent, Wade Isaacson, over the past few weeks. Thank you for your patience during our review.

Based on your complaint, we needed to gather and analyze sound data from T463 to understand the sound levels being generated in its operation. We engaged a testing firm, Barr Engineering, to gather and analyze the sound information. Given winter weather, it took them more time than we expected to gather the data.

The testing firm gathered sound data from a location south of your property and at a distance 100 feet closer to T463 than the distance between T463 and your home. Barr Engineering found that, on average, the sound from T463 at that distance is less than 50 decibels ("dBA"). A copy of their report is enclosed for your information.



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We are also enclosing for your reference a copy of North Dakota Administrative Code Section 69-06-08-01, section 4, which states, in pertinent part:

> A wind energy conversion facility site must not include a geographic area where, due to operation of the facility, the sound levels within one hundred feet of an inhabited residence…will exceed fifty dBA.

We have found that the sound being generated by T463 is in compliance with the requirements of North Dakota administrative code.

We assure you that in locating the turbines for Minnesota Power's Bison 4 wind farm, we undertook a rigorous process of modeling sound levels and locating turbines so that they would be in compliance with all applicable laws and the site permit issued by the PSC. If you would like Minnesota Power to conduct another sound study on your property, we would be pleased to do so at our cost.

Please feel free to discuss and share this information with your attorney. After you have had time to review the report, if you have any questions or would like to discuss this matter further, please contact Todd Simmons. Todd is our General Manager of Wind Operations and is happy to work with you on this matter.

Minnesota Power strives to develop positive relationships with all landowners who are our neighbors, living and working in the areas in which we locate our energy developments. We understand that you have an option agreement with us and we are grateful for your participation with us in our development of this wind farm. Thank you, again, for bringing this matter to our attention and for your patience while we are working to address your concerns.

Sincerely,

Bradley W. Oachs

Bradley W. Oachs
Chief Operating Officer

BWO:sr
Enc.

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# Memorandum

**To:** Dan McCourtney
**From:** Andrew Skoglund
**Subject:** Bison Turbine Noise Compliance Monitoring Results Summary
**Date:** March 19, 2015
**Project:** 34301016
**c:** John Wachtler

Minnesota Power retained Barr Engineering to monitor and analyze noise levels at a wind turbine (Turbine 463) associated with its Bison 4 Wind Project. This memorandum summarizes the results of that monitoring which occurred from March 12, 2015 through March 14, 2015. Preliminary monitoring was also completed on February 28, 2015, March 6, 2015 and March 8, 2015. The monitoring was performed at a site located about 1300 feet southeast of Turbine 463 and approximately 730 feet to the southwest of a nearby residence. Figure 1 shows the location of the monitoring site, turbine and nearest residence.

The monitoring results, which are summarized in Table 1, indicate that monitored sound levels due to the operation of the wind turbine did not exceed the North Dakota Public Service Commission (PSC) regulatory limit of 50 dBA.[1]

**Table 1 Monitoring Result Summary**

| Date | 2/28/2015 | 2/28/2015 | 3/6/2015 | 3/8/2015 | 3/11-3/12/2015 | 3/12-3/13/2015 | 3/13-3/14/2015 |
|---|---|---|---|---|---|---|---|
| Monitoring Period | Period 1 | Period 2 | Period 3 | Period 4 | Period 5 | Period 6 | Period 7 |
| Start Time | 10:34 am | 11:48 am | 3:25 pm | 10:55 am | 2:54 pm | 4:09 pm | 2:32 pm |
| End Time | 11:33 am | 2:20 pm | 3:41 pm | 11:08 am | 4:08 pm | 2:31 pm | 2:55 pm |
| Leq (dBA) | 46.0 | 46.4 | 41.5 | 41.5 | 46.5 | 46.8 | 49.9 |
| Leq (dBA) non-representative conditions removed | - | - | - | - | 45.6 | 46.7 | 42.5 |
| Dominant Wind Direction | NW | NW | NW | NW | NW | NW | NW |

[1] North Dakota Administrative Code Chapter 69-06-08-01(4): *"A wind energy conversion facility site must not include a geographic area where, due to operation of the facility, the sound levels within one hundred feet of an inhabited residence or a community building will exceed fifty dBA. The sound level avoidance area criteria may be waived in writing by the owner of the occupied residence or the community building."*

## Monitoring Protocol and Qualifications

Monitoring was performed with standard outdoor noise monitoring equipment, maintained and calibrated per standard industry practice. Field calibration of the monitor was checked at 114.0 dB prior to run start, and was 114.4 dB upon completion of the monitoring (using standard calibrator, 1000Hz @ 114.0 dB). Attachment A provides monitoring survey sheets. Attachment B provides the equipment calibration documentation.

Field staff were trained and assisted in the operation of the monitoring equipment by Andrew Skoglund of Barr Engineering, who also completed the data analysis. Mr. Skoglund has a B.S. in Engineering Science with focus area of Acoustics, and is a registered professional engineer in Minnesota. He has over ten years of experience assessing noise impacts and compliance for various facility types, including modeling power generation facilities ranging in size from 2 to 600 MW.

## Monitoring Details

As shown in Figure 1, the nearest turbine from the residence is located upwind of the monitoring location when winds are out of the northwest. During all periods winds were primarily from the northwest however, the wind direction did shift to the south and increase in speed on March 14, 2015. During monitoring, temperatures remained within the manufacturers operating specification for all monitoring periods.

Initial monitoring was performed on February 28, 2015, March 6, 2015, and March 8, 2015. A summary of these preliminary monitoring periods is included in Table 1. The monitored sound levels (Leq) for these periods generally ranged from 41-46 dBA. These preliminary results indicate compliance with PSC requirements.

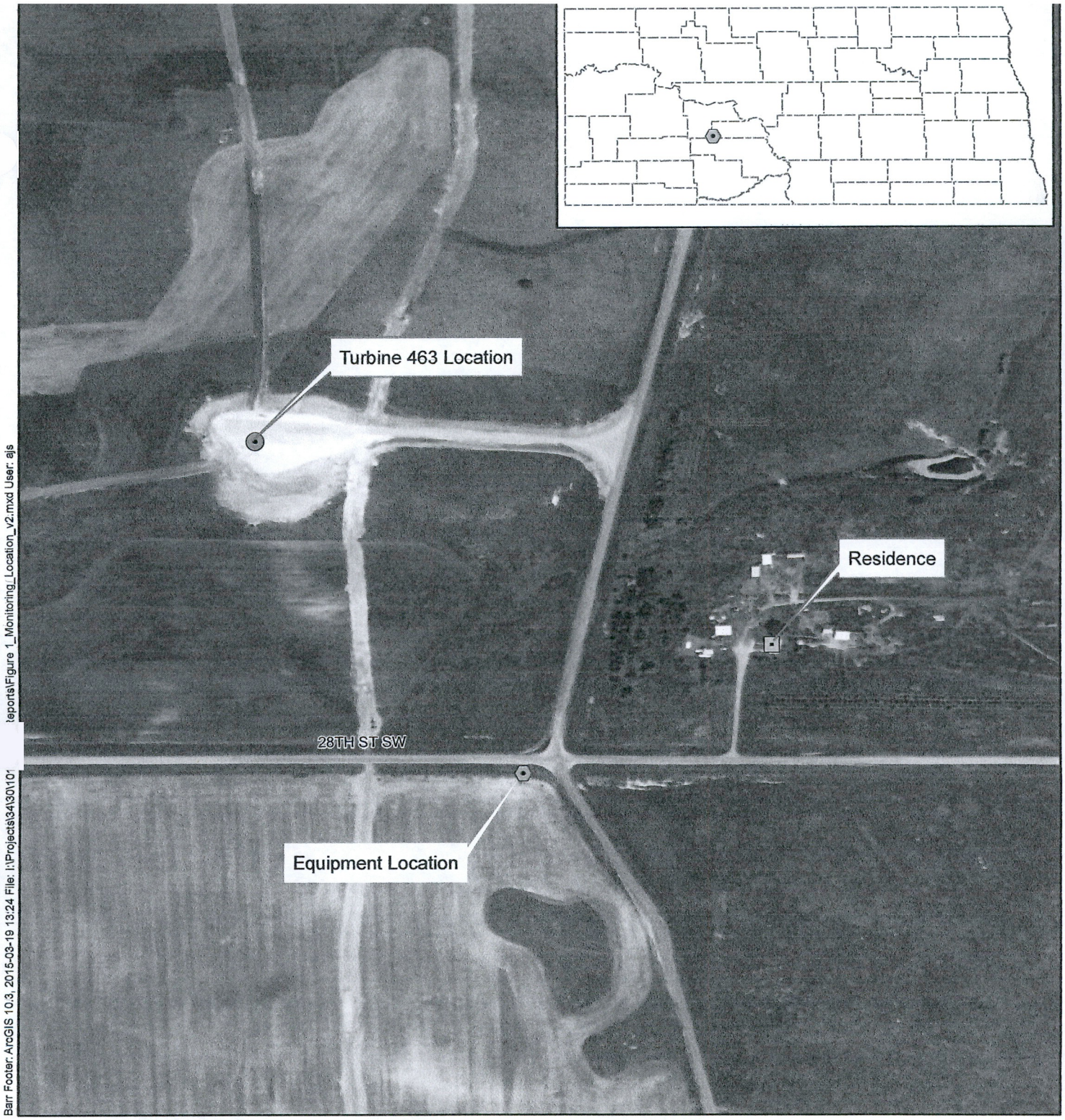
The preliminary monitoring was followed up with three days of continuous monitoring from March 11 through March 14, 2015. The Leq from all noise sources for the three days ranged from 46.5 to 49.9 dBA. A time series showing the detailed results is found in Figure 2. Figure 2 compares Turbine 463 rotation per minute (rpm, in red) with the 1-minute sound level data (Leq, in blue). These data show a significant correlation between turbine rpm and noise level. For example, when the turbine rpm reaches its maximum rotation speed (15 rpm), noise levels plateau at approximately 47 dBA. Brief spikes above 50 dBA only occur in the daytime hours, and are likely associated with non-continuous noise events (e.g. vehicles, vegetation, birds, brief wind gusts), and are not reflective of a more constant source such as a turbine. Portions of the dataset on March 12 and 14, 2015 with high sound levels were due to wind gusts that caused windscreen-derived sound. As a result, this data was removed from the plotted dataset in

Figure 2 as non-representative of actual noise conditions. Exclusion of the non-representative data results in Leq values ranging from 42.5 to 46.7 dBA for the three day period.

In summary, Barr Engineering monitored consistent sound levels during operation of turbine 463 at four separate testing intervals and a three day-long continuous testing interval. The sound results of all monitoring activities are below the PSC 50 dBA standard, indicating that the turbine is in compliance with PSC noise standards.

Attachments

242




Barr Footer: ArcGIS 10.3, 2015-03-19 13:24 File: I:\Projects\34\1301\01\...eports\Figure 1_Monitoring_Location_v2.mxd User: ajs

- Turbine 463 Location
- Noise Monitoring Point
- Residence

N

Feet

250 0 250 500

Figure 1

MONITORING LOCATION
Bison Turbine Monitoring
ALLETE/Minnesota Power
Beulah, ND

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**Lein, Jerry R.**

**From:** rancher@westriv.com
**Sent:** Monday, November 30, 2015 8:56 PM
**To:** Lein, Jerry R.
**Subject:** Wind Farm
**Attachments:** Wind PSC Letter 2014.docx

Jerry,
Here is a list of issues that need resolve with Minnesota Power, we had talked with Scott Monroe and all we get is I'll get back to you and that never happens, also left a message on 11-27-15 with no response.

Thank you
Keith & Deanna Kessler




FREE Animations for your email Click Here!


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19I 11-30-15

On May 23rd 2014, Bauchaus Fencing removed a fence on Sec. 15 without notification which is stated in our easement, letting our cattle out to roam. We had graduation reception at our home. 4 more times over the summer of 2014 they let our cattle out.

On Nov. 21st 2014 I called Scott Monroe and told him we were going out of town the week of the 24TH. And I did not want anyone in our land that week because, we had to check cattle every day to make sure they don't let them out or let gates open again. When we came home on the 27th and checked cows and they removed a ½ mile of fence and rebuilt where our cow were in.

Washout in pasture and hay land were they put underground in need of fill dirt they won't do anything.

Fencing, they never asked us where we wanted the fence to go. It was put were ever their contractor wanted it. We agreed it would all be red brand wire and it is not. The wire is spliced all over unacceptable some wire has clips hanging off it. This tells me it was used. We wanted the north fence on SW section 21 surveyed and the fence on our property. I told Scott that in 2014 already, some fence posts are on the wrong side of the wire. Temp fence was pulled and holes were never filled. They will be liable if animals are injured.

Grass seeding of electrical line, was to be seeded as existing grass or alfalfa, not broom grass, some native grass wasn't seeded till end of July 2015 not acceptable to late.

Rock in the ditches and dirt were to be removed last year still there, hit rock 9/27/2015 with rotary mower broke mower to be paid by Minn Power. Rocks around culverts in ditches need removed. Rocks are not picked around tower or grass seeding.

Crane Walk Easement: Minn Power wanted to move a crane on ½ section of 16 we said no, they said they would force us to sign because they lease our land and can get it court ordered. They offered $2500 per quarter and ½ mile of new fence for a 50 ft. easement, we signed it. They said they would stay on the hills because it was wet, they went through the lowest land route, leaving ruts, I asked for a compaction test in spring of 2015. This had not happened. There is still wood left from pads, they should have padded more then there would not be ruts. Also they used well over the 50 foot easement. Ruts need filled in and rocks were dug up still not removed.

At the public hearing in Center before construction I brought forward concerns of fences, roads, grass seeding, weeds and 2 towers that over hangs our land. They have fenced us out of our property and gave it to the neighbors. Also my wife and I met with Scott and Wade and asked about these 2 towers creating a problem with fences or anything else and we were told it would not affect us at all. That was before we signed the easement now they tell us this is the way it is. They should have put the tower one way or the other to a void this.

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I have gone over the punch list with Scott about every 6 weeks; he says he'll get back to me but that did not happen.

In summary when Minn Power Scott Monroe fist came for a land lease he sat at our table and said when an if they plan a wind farm they would ask our input with roads and tower placement those were the 1st of many lies.

I contacted PSC in July. I'm sorry it's been this long. But we were hoping and trying to work it out with Minn Power but they do not return phone calls.

minnesota power
AN ALLETE COMPANY
Environmental Services

*Daniel P. McCourtney*
*Siting and Permitting*
*218-355-3515*
*dmccourtney@allete.com*

RECEIVED
DEC - 8
NORTH DAKOTA
PUBLIC SERVICE COMMISSION

December 8, 2015

North Dakota Public Service Commission
Attn: Mr. Jerry Lein
Public Utilities Division
600 E. Boulevard Ave., Dept. 408
Bismarck, ND 58505-0480

**RE: Minnesota Power's Bison 4 Wind Project**
**Landowner Complaint Received December 1, 2015**
*Bison 4 Wind Project/Oliver/Morton Counties*
*Siting Application*
*Case No. PU-13-127*

Dear Mr. Lein:

On December 1, 2015 the North Dakota Public Service Commission (PSC) sent a landowner complaint to Minnesota Power (MP) in regards to its Bison 4 Wind Farm located north of New Salem, North Dakota. The complaint was given to the PSC by Mr. Keith Kessler and Mrs. Deanna Kessler, two participating landowners in Minnesota Power's Bison 4 Project (Project).

MP's Wind Project Option Agreement (Option) notifies landowners that a portion of the land they are optioning could be used for a future wind project. Once it's determined that a parcel of land is suitable, landowners are approached to sign a Wind Project Easement Agreement (Easement). The Easement contains details and obligations that both MP and the landowner(s) are subject to. Legal descriptions, along with exhibits detailing the locations of project infrastructure (access roads, underground collector cables, wind turbine sites, etc.) are included in the easements that are signed by the landowner.

In Mr. and Mrs. Kessler this complaint, several items were identified in regards to the Project. Below is Minnesota Power's response to each item included in the complaint.

**Landowner Item**

- On May 23rd 2014, Bauchaus Fencing removed a fence on Sec. 15 without notification which is stated in our easement, letting our cattle out to roam. We had graduation reception at our home. 4 more times over the summer of 2014 they let our cattle out.

103 PU-13-127 Filed: 12/8/2015 Pages: 3
Response to landowner complaint

**MP Response**

- ✓ MP worked with landowners to create temporary fencing plans or alternative pasturing to mitigate impacts to landowners' grazing practices. On one occasion, MP's contractor was removing fence and was unaware the landowner had changed. The contractor inadvertently removed a portion of Mr. Kessler's fence.

  Mr. Kessler was contacted, the cows were returned to a different pasture and a temporary fence was installed to contain the cattle. The pasture was in use a few weeks later. The fence was permanently replaced on approximately 11/5/2015.

  The only other incident that MP is aware of was in section 21, where Mr. Kessler's cows broke through a temporary fence after the calves had just been weaned. In this incident, the fence was in place and the cow(s) broke through after their calves were removed. The fence was repaired after MP was notified.

**Landowner Item**

- On Nov. 21st 2014 I called Scott Monroe and told him we were going out of town the week of the 24TH. And I did not want anyone in our land that week because, we had to check cattle every day to make sure they don't let them out or let gates open again. When we came home on the 27th and checked cows and they removed a ½ mile of fence and rebuilt where our cow were in.

**MP Response**

- ✓ No work was done on Mr. Kessler's Property the week of November 24, 2015 as per Mr. Kessler's Request. MP's fencing contractor was working on a fence at MP's Tri-County Substation the week of November 24, 2015.

**Landowner Item**

- Fencing, they never asked us where we wanted the fence to go. It was put were ever their contractor wanted it. We agreed it would all be red brand wire and it is not. The wire is spliced all over unacceptable some wire has clips hanging off it. This tells me it was used. We wanted the north fence on SW section 21 surveyed and the fence on our property. I told Scott that in 2014 already, some fence posts are on the wrong side of the wire. Temp fence was pulled and holes were never filled. They will be liable if animals are injured.

**MP Response**

- ✓ Fence installations were placed as close to their original location as possible. The north line of the SW¼ of Section 21 was surveyed for the property line which was located on the shoulder of MP's access road. MP placed the fence on the shoulder at the discretion of Mr. Kessler.

**Landowner Item**

- Grass seeding of electrical line, was to be seeded as existing grass or alfalfa, not broom grass, some native grass wasn't seeded till end of July 2015 not acceptable to late.

**MP Response**

- ✓ When Mr. Kessler requested a different mix for use on his property, MP made arrangements to have this done.

**Landowner Item**

- Rock in the ditches and dirt were to be removed last year still there, hit rock 9/27/2015 with rotary mower broke mower to be paid by Minn Power. Rocks around culverts in ditches need removed. Rocks are not picked around tower or grass seeding.

**MP Response**

- ✓ MP was notified about one large rock in a road ditch. This rock was moved out of the way. MP also removed rocks from collector line and crane pads areas.

  Rocks placed around ditch culverts are used as rip-rap for erosion control and are not removed.

**Landowner Item**

- Crane Walk Easement: Minn Power wanted to move a crane on ½ section of 16 we said no, they said they would force us to sign because they lease our land and can get it court ordered. They offered $2500 per quarter and ½ mile of new fence for a 50 ft. easement, we signed it. They said they would stay on the hills because it was wet, they went through the lowest land route, leaving ruts, I asked for a compaction test in spring of 2015. This had not happened. There is still wood left from pads, they should have padded more than there would not be ruts. Also they used well over the 50 foot easement. Ruts need filled in and rocks were dug up still not removed

**MP Response**

- ✓ MP requested a Land Use License and negotiated with Mr. Kessler a payment of $2,500 per quarter section.

  MP stayed within the 50' easement except for one location. An additional area of 75' x 200' was needed where fork lifts moved additional mats down in front of the crane as it was walking. Mr. Kessler was compensated for the resulting crop damage.

**Landowner Item**

- At the public hearing in Center before construction I brought forward concerns of fences, roads, grass seeding, weeds and 2 towers that over hangs our land. They have fenced us out of our property and gave it to the neighbors. Also my wife and I met with Scott and Wade and asked about these 2 towers creating a problem with fences or anything else and we were told it would not affect us at all. That was before we signed the easement now they tell us this is the way it is. They should have put the tower one way or the other to a void this.

**MP Response**

- ✓ MP has reimbursed Mr. Kessler for the impacted land in easement payments. The fence is located along the edge of MP's crane pads which are required for maintenance. The pads were shown on the Easement Agreement exhibits when they were signed.

MP has gone out of its way to address Mr. Kessler's issues by including extra fencing, modifying fencing locations, and re-seeding areas. MP feels that it has fully met and exceeded its obligations.

If any additional information is required by the PSC please let me know.

Respectfully submitted,

Daniel P. McCourtney
Environmental Compliance Specialist

DPM:sr
Cc: David Moeller
Todd Simmons

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PSC 12-8-15 p.3

minnesota power
AN ALLETE COMPANY
Bison Wind Energy Center | 410 South 1st St. / P.O. Box 383 | New Salem, ND 58563 | 701.843.6100 | www.mnpower.com

December 21, 2016

Keith & Deanna Kessler
6001 26th Street SW
Glen Ullin, ND 58631

**RE: Minnesota Power's Proposed Mitigation Agreement with Mr. Keith Kessler and Mrs. Deanna Kessler**

Dear Mr. Kessler,

On December 1, 2015 the North Dakota Public Service Commission (PSC) sent a landowner complaint to Minnesota Power (MP) in regards to its Bison 4 Wind Project located north of New Salem, North Dakota. The complaint was given to the PSC by you, Mr. Keith Kessler and Mrs. Deanna Kessler (participating landowners in Minnesota Power's Bison 4 Wind Project). In the complaint, several items were identified in regards to the Project.

Minnesota Power understands the importance of its landowner partnerships and the value in maintaining these relationships. As a result, Minnesota Power developed the following Mitigation Action Plan in response to the complaint.

**Complaint Items:**

**Fencing -**

1.) Mr. Kessler noticed an abundance of splices in his fence that was replaced after Bison 4 Construction was complete (Open Item).
MP has documented all the splices in the attached map (Exhibit A) and has followed the below course of action to eliminate 69 of the 76 splices (91%).
   a. Replace fence wire on the North ½ of the West side of the SW¼ of Section 21-141-87.
   b. Replace fence wire on the North Side of the SW¼ of Section 21-141-87 from the "H" brace on the West side of the turbine access road, East to the Turbine Access Road.
   c. Replace the fence wire on the North side of Turbine 451.
   d. Replace fence wire on the West side of property located in the N½SE¼ of Section 15-141-87.
   e. Replace the fence wire on the East side of the NE¼ of Section 21-141-87.

   In agreement with Mr. Kessler, MP has performed the proposed actions for items A, B, C, & E. Item D was not finished due to cattle pasturing but will be installed at Mr. Kessler's earliest convenience.

2.) Mr. Kessler would like the fence at Turbine 450 run across the existing turbine pad (Closed Item).

   MP has made the accommodation and the fence has been installed per Mr. Kessler's request. If maintenance is required, a temporary fence around the crane pad will need to be installed

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EL4 106 1221-

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Bison Wind Energy Center | 410 South 1st St. / P.O. Box 383 | New Salem, ND 58563 | 701.843.6100 | www.mnpower.com

3.) Mr. Kessler would like the fence around Turbine 441 across the existing turbine pad (Open Item).
   a. MP can accommodate the request with two different options:
      i. OPTION 1 – Run the fence on the property line with steel gates for future access. The cattle guard would be left in place for future maintenance.
      ii. OPTION 2 – MP can leave the current configuration of the cattle guard around the turbine pad

MP is waiting on a response as to which option is preferred.

**Rocks -**

1.) Mr. Kessler noticed several rocks around turbine pads (Closed Item).

MP has removed all rocks around the project's turbine pads and along collector line easements.

**Crane Walk -**

1.) Mr. Kessler noticed some locations where compaction occurred from crane walks (Closed Item).

MP had de-compacted areas of noticeable compressions and reseeded. Photos of the areas and their current state as of September 20, 2016 are included in Attachment 1.

2.) Additional compensation was requested for an extra crane-walk area that was 25' x 100' (Open Item).

MP agreed to pay for a crane-walk area approximately 50' wide x 2,680' in length in its original landowner project agreement. This resulted in a 134,000 square foot disturbance and was compensated at a rate of $2,500 or $0.0186 per square foot. Based on the additional land used (25' X 200' or 5000 square feet), MP would agree to pay an additional $93.00.

MP will make the additional payment upon Mr. Kessler signing the enclosed mitigation agreement.

Please review MP's proposed accommodations and evaluate which option under Fencing Item #3 meets your needs. If you have any questions or comments please contact MP Right-of-Way Agent Scott Monroe at 701-214-7349.

If you agree to the action plan that MP has listed above, please sign the attached Mitigation Agreement and return in the included self-addressed stamped envelope. Thank you for your attention in this matter.

Regards,

Todd Simmons
General Manager- Wind Operations
Minnesota Power

Encl.

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**Lein, Jerry R.**

**From:** Daniel McCourtney (MP) <dmccourtney@mnpower.com>
**Sent:** Wednesday, March 01, 2017 9:15 AM
**To:** Lein, Jerry R.
**Subject:** RE: Minnesota Power- Bison 4 Discussion
**Attachments:** MN Power Bison 4- Exhibit 4.pdf

**CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe.**

Hi Jerry,
I wanted to follow up on our conversation from yesterday. Attached is a map from Minnesota Power's Application for a Certificate of Site Compatibility for its Bison 4 wind Project.

As you will notice, the house location was not recognized as occupied during project development. As a result, it was not included as an exclusion/constraint area.

Please let me know if you would like to discuss further.

Regards,

Dan

**Daniel McCourtney**
Environmental & Land Supervisor
ALLETE Inc.
30 West Superior St.
Duluth, MN 55802

Phone: (218) 355-3515
Cell: (218) 428-5089
Fax: (218) 723-3916

**From:** Lein, Jerry R. [mailto:jlein@nd.gov]
**Sent:** Thursday, February 23, 2017 4:52 PM
**To:** Daniel McCourtney (MP)
**Subject:** RE: Minnesota Power- Bison 4 Discussion

[ ALERT – External Email – Handle Accordingly ]

Thanks, Dan

**From:** Daniel McCourtney (MP) [mailto:dmccourtney@mnpower.com]
**Sent:** Thursday, February 23, 2017 2:47 PM
**To:** Lein, Jerry R.
**Cc:** David Moeller (ALLETE) ; Todd Simmons (MP)
**Subject:** Minnesota Power- Bison 4 Discussion

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PSC 2-23-17 // 3-1-17

**CAUTION:** This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

Good afternoon Jerry,
It was nice talking to you again. I wanted to follow up on our phone from this afternoon in regards to Mr. Kessler's complaints with Minnesota Power's Bison 4 Project.

Attached is the letter that was submitted under the project docket outlining Minnesota Power's attempts to address MR. Kessler's concerns. All of the items have been addressed with the exception of the following:

- Fencing 1d.-There were cows pastured in the area specified this past fall. The fence is scheduled to be replaced this spring during unfrozen ground conditions.
- Fencing 3.- Mr. Kessler has not made a selection of which option he prefers. Minnesota Power has asked him if there was a different option he preferred but has received no response. Minnesota Power will work to correct any issues once Mr. Kessler makes a decision.
- Crane Walk 2- Mr. Kessler has not signed the attached Mitigation Agreement and Minnesota Power is withholding payment until there is a documented agreement.

I would be happy to discuss these items further if you would like, just let me know.

Regards,

Dan

**Daniel McCourtney**
Environmental & Land Supervisor
ALLETE Inc.
30 West Superior St.
Duluth, MN 55802

Phone: (218) 355-3515
Cell: (218) 428-5089
Fax: (218) 723-3916

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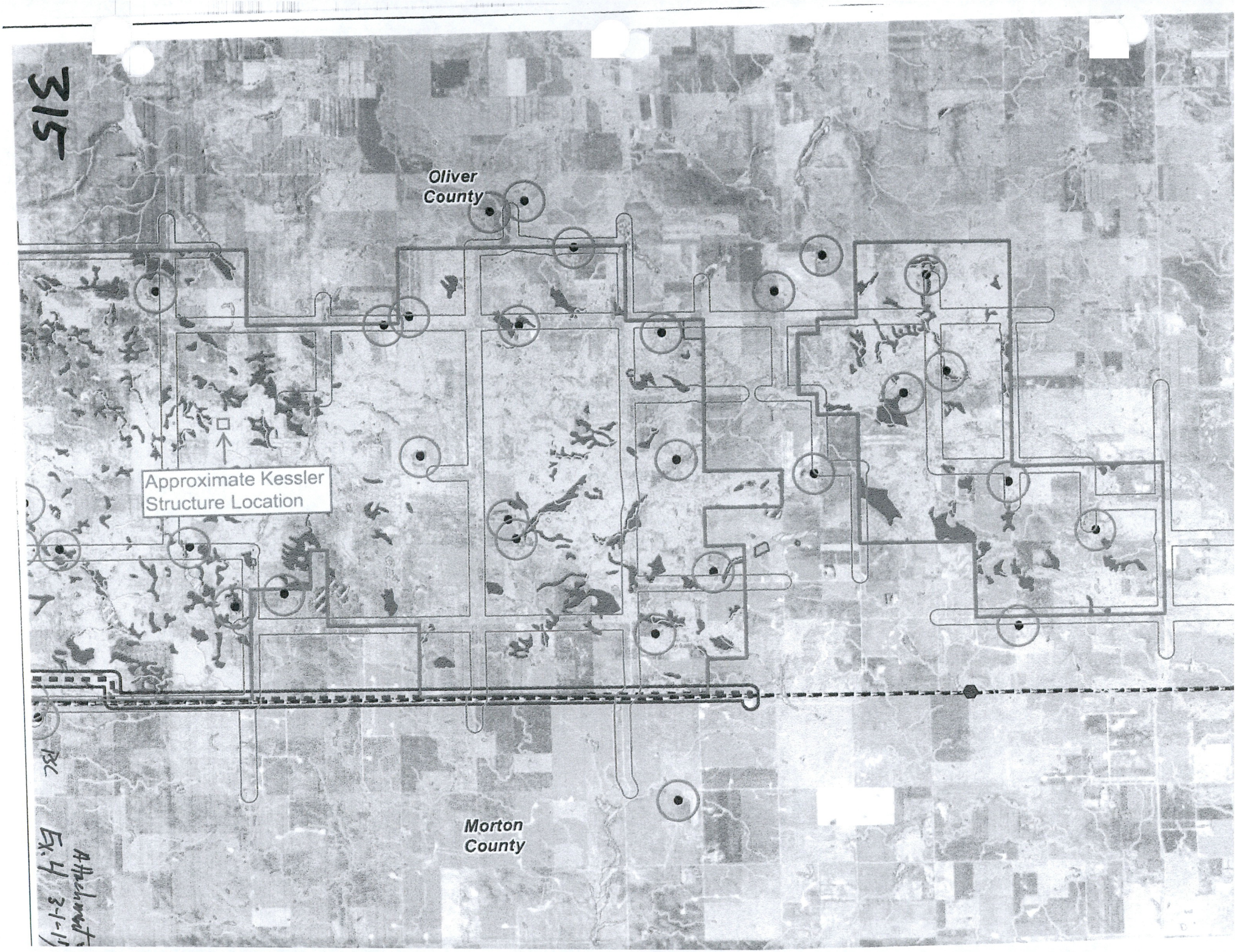
Oliver
County
Approximate Kessler
Structure Location
Morton
County

# MEMORANDUM

**To:** File
**Fr:** Jerry Lein
**Da:** March 1, 2017
**Re:** Keith Kessler Complaint

Mr. Kessler is a participating landowner with two turbines in the Bison 4 wind project sited by the Commission in Case No. PU-13-127. On June 11, 2016 Mr. Kessler left voice mail with Commissioner Kalk regarding fencing and other issues with Minnesota Power. I returned his call and we agreed I would have somebody from MN Power's main office contact him. I contacted Dan McCourtney, MN Power Environmental & Land Supervisor, and asked him to contact Mr. Kessler and let me know when the issues are resolved.

If I remember correctly, I next heard from Mr. Kessler by phone on November 30th He had a list of issues, which I asked him to email to me. I received his list the next day and passed it on to Mr. McCourtney at MN Power.

On January 5, 2016 I received an update from MN Power that it had been working with Mr. Kessler since construction of Bison 4 began and continues to work to resolve the issues. Diagrams showing fencing adjustments made on his property to accommodate two turbines near his property were provided. MN Power believed it had signed easements from Mr. Kessler for non-turbine project infrastructure and these fence adjustments were within the easement area. MN Power agreed to move the fences across the two turbine crane pads.

On February 6, 2017 MN Power filed a copy of a proposed mitigation agreement/plan dated Dec 21, 2016, which Mr. Kessler refuses to sign. As detailed in the document, MN Power believes the issues are all resolved except:

- Fencing 1d.-There were cows pastured in the area specified this past fall. The fence is scheduled to be replaced this spring during unfrozen ground conditions.
- Fencing 3.- Mr. Kessler has not made a selection of which option he prefers. Minnesota Power has asked him if there was a different option he preferred but has received no response. Minnesota Power will work to correct any issues once Mr. Kessler makes a decision.
- Crane Walk 2- Mr. Kessler has not signed the attached Mitigation Agreement and Minnesota Power is withholding payment until there is a documented agreement. $93.00 additional compensation.

Also, in February, 2017 Commission Attorney John Schuh, visited with Mr. Kessler by telephone following up on issues raised by Mr. Kessler. Mr. Kessler raises a new issue with noise from a turbine that is too close to his son's residence. GIS data indicates the turbine is approximately 1122 feet from the residence. MN Power reports that this residence was unoccupied at the time Bison 4 was permitted and constructed. Based on photographs and electric usage at the residence MN Power concludes that it became occupied during this last year.

The Commission does not normally consider distances from unoccupied or abandoned residences when issuing site permits. In this case the residence was not identified as an occupied residence in the siting application process. Mr. Kessler did appear as a public witness at the hearing raising questions about underground waterlines, weed control and he didn't get a final consultation on proposed facility locations he thought had been promised to him. (Hearing recording at 2 hours 19 minutes) He did not bring up the residence.

**Addendum**

To: File
Fr. John M. Schuh
Da: March 2, 2017, 2:13 PM
Re: Follow-Up to Mr. Lein's Memorandum

Jerry and I followed up with Mr. Kessler via phone. We discussed the outstanding issues relating to Bison 4 and his property. The remaining issues may be summarized as: Outstanding fencing issues, ruts, an underground collection line that has left an imprint on his property, some other minor things such as left over items, easement violations, and the wind turbine being too close to a residence. I advised him that we would not be able to enforce his easement provisions and that we would have to look back into the record to see what can be done with regard to the nuisance wind turbine. Mr. Kessler also expressed frustration in getting the run-around by the company, but does not want the company to come out until the snow has melted so that he can do a full assessment of outstanding issues.

I suggested an appropriate course of action is to have Mr. Kessler call PSC Staff when he determines the snow has melted enough to make a proper assessment. Staff will arrange a visit to Mr. Kessler's property with the company and set out a compliance plan. Mr. Kessler agreed that this was an acceptable course of action. Under new siting landowner complaint procedure, all documents will be placed in an I-File and will be linked to the siting case as a "related case."

JS

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PSC 3-1-17 p.2

KESSLER notes from Keith re meeting with PSC and Minn Power 4-14-17

April 14th 2017 Good Friday
Meeting 2:00 with PSC and Minnesota Power

Met at tower 448 on SW 1/4 21
Talked about fencing, spraying and rocks to be removed

E1/2 of 21
Looked at Leingangs tower that boarders our land to see the washouts into our hayfield

Corral
Looked at wash out in hayfield (we ended up moving our fence because washout was so bad. Did not want to drive hay machine or baler across)

Tower N of corral
Pointed out holes from temp fence. Pointed out underground and crane walk ( you can see where
the land is different)

Tower on 15
Pointed out wash out by fence from east to west.
Talked about cattle guard and putting in double fence. Talked about how we were tolad that the tower was not going to bother our land. Scott agreed that we did talk about it. Wade ask if we had it in writing? Keith said GD we had an agreement and I should not had to have it in writing.

Went to yard on 15
Talked about the noise and how close the tower was to the house. Talked about how we told the one of our sons where going to live there. Scott also agreed that we did tell him and Wade. And Jerry and John both said they would not want to live there.

PSC agreed to give Minnesota Power a punch list and it was going to be done in a timely manner. We never heard from them until February 2018. 10 months later

318

4-14-17

Wed 6/19/2019 4:18 PM

We made changes highlighted in yellow.

Fencing us off our property at the 2 locations by wind towers.

Do we need to add to this section? Or is it going to be in reclamation?

SEE LENGTHY PAGES

Mon 6/24/2019 1:47 PM

Conversation from Good Friday 2017

AP 14

We meet with Scott, Wade, John Schuh and Jerry Leins . We meet on section 21 looked at underground line, and we point out the ruts that were made by either fencing crew or who ever put silt fence in. We went to look at section 16 were the crane walk took place and discussed holes from temp fence that were never filled in on section 16 ,15 and 21. Then 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 to close to the property line and that one of our sons was going to live in the house. At that time Scott Monroe agreed that we did tell him and Wade that. Then Wade said do you get it in writting? Keith than said God Damn it I thought I could trust you , I thought we were in a partnership together.

Also on page 25 Kessler Proposal 3: we think the survey should be sent to all Bision wind project included the one under construction.

Tue 7/2/2019 9:15 AM

We want the letter to include all there lying and letting cattle out, not doing things right so it show's why we will do it ourselves.



4-14-1

Notes on Good Fri

**Lein, Jerry R.**

**From:** Lein, Jerry R.
**Sent:** Monday, May 15, 2017 9:56 AM
**To:** 'rancher@westriv.com'; 'Wade Isaacson (ARR)'; 'smonroe@allete.com' Schuh, John M.; Hamre, John G.; David Moeller (ALLETE) (dmoeller@allete.com); Daniel McCourtney (ALLETE) (dmccourtney@allete.com)
**Cc:**
**Subject:** Kessler Site Visit.docx
**Attachments:** Kessler Site Visit.docx; doc18598820170515095607.pdf

Attached is a summary of remaining issues as discussed during our site visit to the Kessler ranch on April 14th. Please respond to confirm these issues or to let me know if I have missed anything.

Thank you.

Jerry Lein
701 328=1035

325

4 I-15-0195 Filed 05/15/2017 Pages: 5
Summary of remaining issues from 14 April 2017 site visit
Public Service Commission Staff
Jerry Lein

4/ PSC 5-15-

**Lein, Jerry R.**

**From:** Lein, Jerry R.
**Sent:** Monday, May 15, 2017 9:56 AM
**To:** 'rancher@westriv.com'; 'Wade Isaacson (ARR)'; 'smonroe@allete.com'
**Cc:** Schuh, John M.; Hamre, John G.; David Moeller (ALLETE) (dmoeller@allete.com); Daniel McCourtney (ALLETE) (dmccourtney@allete.com)

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701 328=1035

4 I-15-0195 Filed 05/15/2017 Pages: 5
Summary of remaining issues from 14 April 2017 site visit
Public Service Commission Staff
Jerry Lein

4 PSC 5-15-17

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**MEMORANDUM**

To: File Case No. I-195

Fr: John Shuh and Jerry Lein

Da: May 15, 2017

Re: Kessler Complaint re Bison 4 Project
Summary of Issues

On Friday, April 14, we visited the Keith Kessler Ranch in response to complaints from the Kesslers regarding reclamation issues on their land and a turbine placed too close to a residence now occupied by their son. Present for the site visit were Mr and Mrs Kessler along with ALLETE ROW agents Wade Isaacson and Scott Monroe. What follows is a summary of issues:

1. There are areas with washouts, ruts, rocks, weeds and other minor reclamation issues including a need for further de-compaction and reseeding along portions of crane walk paths. Mr. Kessler provided the attached map of his property detailing where these areas requiring further attention are located

2. MN Power replaced several segments of fence wire but there are numerous remaining areas with splices in fencing wire that Mr. Kessler believes should be replaced with new fencing.

3. There was a cattle guard on an access road to Turbine #441 that was not working because it had not been installed properly. There was also a question concerning whether a fence should be routed around or across the 441 turbine pad.

4. Turbine #441 is located within approximately 1200 feet of a residence occupied by the Kessler's son resulting in noise, shadow flicker and other issues at the residence. The residence was not occupied when Bison 4 was sited and constructed. Mr and Mrs Kessler state they informed the ROW agents before the turbine was sited that they did not want turbines near that residence because their son was planning to occupy it.



PSC 5-15-

**Lein, Jerry R.**

**From:** rancher@westriv.com
**Sent:** Tuesday, September 19, 2017 8:49 PM
**To:** Lein, Jerry R.
**Subject:** Response to Minn Powers offer
**Attachments:** WIND TOWER PSC.jpg

**CAUTION:** This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

Minn Power did not address all the issues in original complaint

Thank You ,
Keith Kessler

FREE Animations for your email Click Here!

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9-19-17

9/19/2017

In regards to Release of Claims and Purchase Agreement

First our land is not for sale!
Second your offer does nothing to remedy you fencing us off our property on the SW ¼ Sec 15
We could not buy a 1/4 of land, build a house, out buildings and established trees on that price.

As to the Release of Claims

We cannot sign that due to the letter attacked to the NDPSC releasing Minn Power of all liabilities with the wind turbine being located closer to the farm house than it is supposed to (you have done nothing to keep the noise under 50dc like the agreement states)

The $27,270.00 won't cover the cost to hire the work to be done.
If you would sit down face to face and discuss a resolution would be more productive than taking 5 months on a buyout plan.

Keith G Kessler Keith G Kessler

Deanna A Kessler Deanna A Kessler

356

In regards to Release of Claims and Purchase Agreement

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Second your offer does nothing to remedy you fencing us off our property on the SW ¼ Sec 15
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Keith G Kessler Keith G Kessler

Deanna A Kessler Deanna A Kessler

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prc 5-11-18

May 11, 2018

Dear Todd Simmons and Minnesota Power

We Keith and Deanna Kessler reject your offer to pay us to remove our house from our property for 175,000.

Reasons being

1. We told you in your last offer that our property is not for sale
2. We are not moving, nor are we tearing down our home.
3. In September and October I called Todd and left message's to see where you were at with the issue after we rejected the land purchases offer, Todd never returned our calls, so with the winter approaching we built a new storage building on our property so we sure are not going to tear down the House.
4. Your offer does not even include what it would cost to purchase land with established shelter belt around it or cost of water and sewer, getting power on the property.
5. This yard also serves as a facility to work our cattle at. Your company put the wind tower in the wrong place not us, we told you it was going to be too close to our land before it was even built.

Counter Offer 2 options you have until 30 days to reply from May 11, 2018

1. Take down tower T441 and put everything back to the original condition
2. Leave the tower T441 and the fence and cattle guard also we will take care of all reclamation issues fencing, crane walk, erosion control, black dirt, seed all labor in exchange:
   You pay us an annual payment for 4 wind towers for 50 years the life of the easement and back pay on 4 towers dating back to the first payments when they started production only after that is agreed to in writing will we sign off of anything and there will be no more easements signed

Just to recap we are not selling any land or moving off our property

_____ _____

Keith Kessler Deanna Kessler

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5-11-

remodeled was not occupied and was in disrepair. Because that structure wasn't being lived in, the setback requirement of 1400' did not apply to that building. Additionally, at no time, including at the PSC's public hearing on the Bison 4 wind project development, were issues raised regarding either the location of Tower 441 or plans to remodel and inhabit the abandoned building. Minnesota Power is not responsible for the choice made to move to the turbine by renovating and living in that building.

We are very far apart in terms of expectations for what it would take to resolve this issue. Over the past year, Minnesota Power has communicated two very reasonable offers, both of which have been rejected. We appreciate that you do not want to sell the property or remove the building and acknowledge your dissatisfaction.

As a part of resolving the Bison 4 construction items we would like to propose our plan to fix the outstanding issues (a copy of the Memorandum listing these items at 1-3 is attached at Attachment A and a proposed plan to remediate the issues in Attachment B). Let's work together to get these items completed soon.

Yours truly,

Todd Simmons

TS:sr
Attach

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## Keith Kessler Complaint – Weekly Report

## Case No. PU-13-127 & I-15-0195

## June 5, 2018

- The Kessler's received Minnesota Power's letter 5/31.
- Minnesota Power spoke with Mr. Kessler on 6/1 regarding the letter.
    - Mr. Kessler indicated he is open to discussion regarding allowing Minnesota Power to address the reclamation issues related to Bison 4 Construction.
    - Mr. Kessler also indicated he would like to further discuss Turbine #441 resolution.

399

115 PU-13-127 Filed 06/06/2018 Pages: 1
Weekly reclamation progress and status report
Allete, Inc.

115 6-5-18

3. indicated that the on-site construction manager coordinates all aspects of the Project, including communications with landowners. **Part 6.4.1.**

4. listed in the demographics section the impact on landowners and particularly farmers as minimal and will include compensation to the landowners. **Part 7.2.2.**

5. In regards to placement of the project near residences, that "[t]he development of the Project will not displace any residences or existing or planned industrial facilities. Wind turbines will be sited a minimum of 1,400 feet from existing or planned industrial facilities. Wind turbines will be sited a minimum of 1,400 feet from occupied residences." **Part 7.3.1.** *See also* Parts 7.3.2, 7.5.1, 7.5.3.

6. In regards to the impact of noise, that "[t]here are approximately 32 residences and one cemetery located either within the Project boundary or within one mile of the boundary." **Part 7.6.1.** "Minnesota Power has chosen a benchmark noise level of 50 dBA as the criterion for the noise evaluation." **Part 7.6.2.** "The minimum single turbine setback distance calculated where an exceedance of the 45 dBA benchmark would no longer occur is approximately 402 meters (1,320 feet) for the worst case turbine." **Part 7.6.2.** Impacts to nearby residents and other potentially affected parties in terms of noise will be taken into consideration as part of the actual siting of the turbines. **Part 7.6.3.**

7. that "[t]here are 32 occupied residences, within the Project site boundary" and identified these homes in Exhibit 4. **Part 7.10.1.**

8. Even though many of the 32 homes were abandoned or clearly not residences, they were listed and identified in Exhibit 4

9. However, the Kessler home was not listed or identified.

10. In regards to the impact on agriculture and farming, that "[n]o impacts are anticipated to animal health and safety due to the construction or operation of the wind farm and associated facilities. Except for the physical locations of the turbines and access roads, all the land surrounding the facility

will be available for grazing." **Part 7.10.2.** "The resulting overall impact on production for the top five crops in Oliver and Mercer Counties would be expected to be minor to negligible. As noted earlier, wind lease payments will provide farmers with a supplemental source of income, thus helping to support the continuation of farming in Oliver and Mercer Counties."

11. that "[n]o turbines will be placed within 1,400 feet of occupied residences." **Part 7.10.2.**

12. As to mitigation measures relating to <u>farming and ranching</u>, that "Minnesota Power will work with landowners to minimize impacts to their land. Once the wind turbines are constructed, all land surrounding the turbines can still be farmed or grazed." **Part 7.10.3.**

The following tables or exhibits were provided with the application:

| | |
|---|---|
| Table 3-1 | Exclusion Areas |
| Table 3-2 | Avoidance Areas |
| Table 4-1 | Performance Standards, Including Setbacks, For Wind Turbines |
| Table 7.18-1 | Summary Of Impacts And Mitigation |
| Exhibit 2/4 | Exclusion and Avoidance Areas Map |
| Exhibit 10 | Wind Turbine Design Features |

The exclusion area or avoidance areas tables and map (Table 3-1, Table 3-2, and Exhibit 4) do not seem to include any reference to the residence located on the NW1/4 of Section 15, and even if it is marked, the red circle indicates that the residence is outside the 1400 distance – which did not end up being the case.

**¶2** A public hearing on the application was held on September 13, 2013, at the Oliver County Courthouse, Center, North Dakota. Patrick Ward served as the administrative law judge for the

hearing. Keith and Deanna Kessler attended, along with several other landowners. **Doc. No. 32.**

¶3 Minnesota Power provided a detailed listing of the requirements to be set forth by the Commission in its Order and certifying its obligation to comply with each of these forty items which will be contained in the certificate or permit issued by the Public Service Commission. **Doc. No. 36, Public Hearing, Exhibit 3.** The following requirements were listed:

> Para. 1 company agrees to comply with the certificate of site compatibility, chapter 49-22 of the North Pacific. Oh, chapter 69-06-08 of the North Dakota administrative code, and is responsible for compliance with the order and conditions and criteria set forth in the applicable laws and rules
>
> Para. 6 the company agrees that the certificate is subject to suspension or revocation for failure to comply with commission's order, or the conditions and criteria for the certificate
>
> Para. 7 the company agrees to maintain records that will demonstrate that is complied with the requirements of the commission's order and the certificate
>
> Para. 9 the company agrees to construct and operate the facility in the manner described in the company's application and the certification relating to orders provisions, which control if there is any conflict between the application and the order provisions
>
> Para. 27 upon completion of construction of each wind turbine, restore the area affected as near as practicable to the condition as it existed prior to the beginning of construction

Para. 40 the certificate of site compatibility is subject to suspension or revocation for failure to comply with the commission's order and the conditions and criteria of the certificate

¶4 The following occurred at the time of the public hearing of soon thereafter:

1. During the public meeting (probably during a break) the Kesslers raised the issue of the placement of Turbine 441 with Scott and Matt. In the presence of other Minnesota Power representatives (some wearing suits) Matt blew up and basically yelled at the Kesslers, telling them "we don't have time to move things around due to the tax credits, we have to get started, this isn't the place for it, we can meet latter and discuss it." The whole purpose of the public hearing is to determine if any member of the public has a personal or general concern about the project and it is indeed "the place for it" – that is for the public to relay any concerns they may have. Matt's statement to the Kesslers was a blatant misstatement of the law, a misrepresentation of the ability to later fix the problem, and an intentional act to prevent the PSC from hearing the concerns of a potentially aggrieved landowner.

2. The Kesslers during the public hearing once again told Minnesota Power's representatives that they will be using the house at issue, and specifically told Minnesota Power representatives that their son will be living there as soon as he gets back from college. It is at this point that despite any further failings to do so, Minnesota Power was obligated to advise the PSC and the hearing officer that the application failed to include what may be properly considered an "occupied residence" and that the residence at issue, although perhaps presently "unoccupied" is fully capable of being immediately occupied and is intended to be occupied in the very near future. Had Minnesota Power been forthright to the PSC and the hearing officer, the siting of Turbine 441 could have been modified slightly further to the east, thus preventing this entire debacle. Instead, Minnesota Power choose to placate the Kesslers by falsely claiming the problem would be fixed at a later time,

knowing full-well that once the application was approved the making of changes to siting locations would be difficult if not impossible. The time to resolve this issue, and the time to disclose the potential problem to the PSC, was precisely at this hearing. Minnesota Power had knowledge of the potential problem and failed to disclose that to the PSC or the hearing officer.

3. Following the public hearing the Kesslers met with Scott and Wade at the New Salem office, where once again the Kesslers stated that Turbine 441 was too close to the Section 15 residence. Scott reassured the Kesslers that "we have to stay back 1400 feet because we have to." At this meeting Scott and Wade attempted to get Kesslers to sign the easement and the Kesslers at that time raised several concerns, including issues relating to fencing and overhang issues. The Kesslers stated that the placement of Turbine 451 and Turbine 441 "are going to interrupt with our fence." Both Scott and Wade reassured the Kesslers that neither turbine will be a bother and the fence will go right back where it was. At the end of that meeting the Kesslers didn't sign the easement and Keith asked them, "what happens now if we don't sing the easement" and Wade replied, with a big smile on his face, "if you don't sign it we will just get a judge to sign it" and asserted that he would be able to make that happen quickly, within 30-60 days. At this meeting The Kesslers were advised by Minnesota Power – indeed, guaranteed – that Turbine 441 would not be within 1400 feet of the Kessler residence at Section 15. This did not happen.

¶5 On September 25, 2013, the Public Service Commission issued its Findings of Fact, Conclusions of Law, and Order. This document included the following relevant findings of fact:

35. No turbines will be placed within 1,400 feet of an occupied residence. The closest turbine to a participating occupied residence is approximately 1402 feet. The closest turbine to a non-participating residence is approximately 5972 feet.

36. Minnesota Power conducted noise and shadow flicker analyses, using both "worst case" and "realistic" scenarios. These studies indicated that the Project will not cause adverse effects due to either noise or shadow flicker. As shown in Hearing Exhibit 2, the highest expected cumulative noise level at any participating residence is about 46 decibels (dBa). The highest expected level at any non-participating residence is 37 dBa. . . .

**Doc. No. 40.**

¶6 The Public Service Commission went on to make the following applicable Conclusions of Law:

3. The Application submitted by Minnesota Power meets the site evaluation criteria required by North Dakota Century Code chapter 49-22.

4. The location, construction, and operation of the proposed energy conversion facility will produce only minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.

. . .

8. The proposed project is of such design, location and purpose that it will produce minimal adverse effects.

**Doc. No. 40.**

¶7 Despite the Kesslers' repeatedly raising the siting location issue with Minnesota Power and despite Minnesota Power's statements and guarantees that Turbine 441 would not be within 1400 feet of the residence, Turbine 441 was placed 1125 feet from the Kessler home.

¶8 In conjunction with dealing with reclamations issues in 2017, the issue of the placement of Turbine 441 was addressed with

¶9 In regards to the planning and approval of the wind project, the following occurred:

1. mid-level Minnesota power representatives failed to provide proper information to the Kesslers as to the exact location of the turbines,

2. provided misinformation to the Kesslers in regards to the location of one particular turbine,

3. took positive steps to dissuade or prevent the Kesslers from raising this concern at the public hearing on September 13, 2013,

4. failed to acknowledge or inform the Public Service Commission – in its application and communications to the public service commission) – even the possibility that the structure near turbine 441 was inhabited or would be inhabited in the near future,

5. failed to acknowledge or inform the Public Service Commission – when the issue was raised by the Kesslers – about being told that the residence on the Kessler's property was only temporarily uninhabited due to the Kessler's child being in college, and placed turbine 441 within 1400 feet of the residence at issue.

6. provided false information about being informed previously that the Kesslers did not consider the residence abandoned and indeed considered the residence inhabited for purposes of the avoidance and exclusion provision of the North Dakota Century Code and the North Dakota Administrative Code.

¶10 The facts regarding the placement of Turbine 441 within 1400 feet of a residence constitute fraud upon the Kesslers and the PSC and require PSC action to resolve the issue and to make sure nothing like this happens to any other North Dakota landowner.

1. When Minnesota Power first proposed Bison 4 Wind Project to the Kesslers (and presumably all others) the company guaranteed

that it would comply with the law and that the turbines would not be within 1400 of any residence.

2. Minnesota Power did not at any time prior to the public hearing provide a map to the landowners indicating where it intended to place the turbines.

3. Prior to the public hearing the Kesslers were told that a preliminary siting map had been drafted and they asked for a copy; however, Minnesota Power never provided that copy to them. Minnesota Power did not take any steps to disclose the exact siting of Turbine 441 to the Kesslers, and indeed – since the map submitted to the PSC at the public hearing made it appear to the Kesslers that the turbine was less than 1400 feet from the house at issue – Minnesota Power intentionally failed to relay this information to the Kesslers.

4. Prior to the public meeting the Kesslers have repeatedly relayed their concerns about the placement of any turbines too close to BOTH their home residence AND the Section 15 residence. The Kesslers repeatedly told Minnesota Power that the Section 15 residence was going to be occupied in a very short time by their son who would be returning from college soon; they were repeatedly put off and told it would not be a problem, that the company is required to follow the law, and there were several opportunities to move the siting if it was too close to the residence. The Kesslers specifically discussed this issue with Scott Monrow prior to the public meeting. Each time the Kesslers were told that all turbines would be at least 1400 feet from any residence and that there would be "a window" of time in which to move it away from the residence if it was too close

5. The first indication that the Kesslers had that Turbine 441 had been sited within 1400 feet of the Kessler home occurred at the public meeting when the Kesslers finally had an opportunity to see the "final" siting map. The map provided at the public hearing did not make it absolutely clear that Turbine 441 was less than 1400 feet from the Section 15 residence. However, the map provided sufficient indication to the Kesslers to provide them great concern about the location of Turbine 441 and to raise the issue with Minnesota Power during the public hearing.

6. The exclusion and avoidance tables and most importantly the map entitled "Exhibit 2 Exclusion and Avoidance Areas" which

showed the placement of each of the towers and the route of the underground power lines presented at the public hearing totally failed to include the Kessler Section 15 residence.[2] Given the fact that the Kesslers repeatedly raised their concern about the Section 15 residence to Minnesota Power before the hearing, the fact that no map was provided to the Kesslers before the hearing (despite their request) implies that Minnesota Power not only knew about the Section 15 residence but intentionally failed to list the residence or place it on the Exclusion and Avoidance map.

**7.** The Kessler Section 15 residence should have been listed and disclosed to the PSC through the application and hearing process, particularly given the other residences that were disclosed. Minnesota Power disclosed all the other residences – even those which had been sitting empty or not used for several years.

**¶11** The following additional facts relate to the Kessler Section 15 residence:

1. the residence existed in 1989 when the Kessler bought the land.

2. from 1989-1992 Keith and Deanna Kessler lived in the home.

3. from 1993-1997 Keith's brother Paul lived in the home.

4. from 2001-2003 Keith's mother-in-law lived in the home.

5. from 2003 to the Spring of 2015[3], the home was used regularly for i) lunches for the working crew when the Kesslers were working cattle, ii) for a hunting cabin, iii) an additional residence for out-of-town family members to stay during family get-togethers, including Keith's brother, his brother-in-law, and his sister, and iv) hosting super bowl Sunday parties.

---

[2] It should be noted that the application for a Certificate of Site Compatibility filed on May 6, 2013, also failed to include the Section 15 Kessler residence. See **Doc. No. 5, page 310**. Exhibit 4 Exclusion and Avoidance Areas" which showed the placement of each of the towers and the route of the underground power lines.

[3] Stephen was in college from 2011-2015, and Hayden was in college 2014-2015.

6. Throughout 2003 through 2016 the Section 15 residence was in no way abandoned or left in disrepair. The house throughout the development of the entire project was capable of being used as a residence; it had furniture, running water, working toilet, full kitchen, carpet, and full heating. Yes, general maintenance and upkeep occurred; in 2012 a new coat of paint was administered on the outside; in May – June 2016 the Kesslers put in new flooring and painted the interior; in 2016 the shingles were replaced and some new windows were installed; in 2018 another new coat of paint was administered as well as a few more windows were installed.

7. The residence was used by Hayden when he returned from college in the late spring and summer of 2015, and soon thereafter Hayden and his girlfriend (soon to be wife) lived there full-time. The couple was married in 2017 and their first home was the Kessler Section 15 residence.

8. Minnesota Power asserts that the home was abandoned, incapable of being lived in, and was AFTER the construction was completed remodeled and made capable of being a residence. This is simply not true, as clearly shown in the immediate preceding paragraphs. Worse yet, all anybody had to do was walk up to the residence and look at it to realize that it was indeed a fully functional residence.

9. Minnesota Power – despite being repeatedly told otherwise by the Kesslers – ignored the Kessler's statements about the residence and that it would be used by their son when he returned from college, and failed to include the residence in the avoidance and exclusion area tables and maps submitted to the PSC, and then attempted to cover their mistake by failing to disclose the residence to the PSC, failing to disclose the information submitted by the Kesslers as to the property being a residence, and subsequently lying to the PSC about the history of the residence and the statements made by the Kesslers to Minnesota Power.

**¶12** The failure of Minnesota Power to list the Kessler Section 15 residence as a residence in the avoidance and exclusion tables and

maps makes no sense at all when one looks that the other residences that Minnesota Power actually listed. "Exhibit 2 Exclusion and Avoidance Areas" showed the placement of each of the towers and the route of the underground power lines. This map (presented at the public hearing) totally failed to include the Kessler Section 15 residence. And yet the following other residences were shown.

A. Mercer County, Keith and Deanna Kessler main home, occupied
B. Section 6, Wayne Cline residence, occupied
C. Section 4, Skalsky property, residence occupied by Metz
D. Section 18, Pulver residence, unoccupied 2004 to the present
E. Section 19, Clinton Redmann residence, occupied
F. Section 20, Aasmundstad residence, occupied
G. Section 20, Maize residence, occupied
H. Section 22, Mary Winkler residence, no one there 2009-2014, son lives there now
I. Section 27, Voegele residence, parents' place, unoccupied 2010 to the present
J. Section 26, Greg Voegele residence, occupied

The fact that Minnesota Power included all of these places – some occupied, and some not, for decades – and yet somehow missed the one residence to which they had been informed repeatedly was a viable residence and would be used by the Kessler son once he returned from college – demonstrates that Minnesota Power knew it was within the distance of 1400 feet and intentionally chose not to place the Kessler Section 15 residence on the map.

**¶13** Once this issue was brought to the attention of the PSC, Minnesota Power repeatedly provided false information to the PSC by the letter submitted to the PSC on May 29, 2018. **Doc. 147, Minnesota Power Letter 5-29-18.** Minnesota Power attempts to justify its position

by narrowly and improperly using the term "uninhabited residence" in a manner that is contrary to the facts of the case, the statutory intent of the avoidance and exclusion areas, and any reasonable interpretation of what constitutes an uninhabited residence. The temporary absence of the Kesslers son from the home he would – without a doubt – come back to should not serve as a basis for considering the Kessler residence as "uninhabited."

**¶14** The response of Minnesota Power dated May 29, 2018, issued by Todd Simmons, is patently and repeatedly false and demonstrates Minnesota Power's intentional ignorance, doubling down, and an organized presentation of lies.[4] **Doc. 147, Minnesota Power Letter 5-29-18.**

## A. SENTENCE 1

**¶15 "The Bison 4 Wind Project was appropriately permitted to locate Tower 441 where it is."**

**1.** This is true only if one ignores the exclusion and avoidance area statutory provisions and at the same time interprets the residence has been uninhabited despite the fact that it was a viable resident that was intended to be inhabited in the very near future.

**2.** Tower 441 was not "appropriately permitted" as clearly shown by the application requirements submitted by the company. As discussed above, the application asserts that the following precautions have been taken as to the impact on landowners and the placement of the project near residences:

[4] The letter is part of the record, **Doc. 147, Minnesota Power Letter 5-29-18, Para. 5**

(a) The impact on landowners and particularly farmers is listed in the demographics section as minimal and will include compensation to the landowners. **Part 7.2.2.**

(b) In regards to placement of the project near residences, the application specifically stated that "[t]he development of the Project will not displace any residences or existing or planned industrial facilities. **Part 7.3.1.** Part 7.3.1 does not differentiate between occupied and unoccupied residences and asserts that "the Project will not displace any residences" – and yet it has displaced the Kessler residence.

(c) Wind turbines will be sited a minimum of 1,400 feet from existing or planned industrial facilities. Wind turbines will be sited a minimum of 1,400 feet from occupied residences." **Part 7.3.1.** *See also* Parts 7.3.2, 7.5.1, 7.5.3. This part of Part 7.3.1 does differentiate between occupied and unoccupied residences, but the statement ignores the Kessler property by adopting the view that the residence doesn't apply because it is – at the moment – unoccupied. This is disingenuous at best, and a misstatement of fact to the PSC at worst.

(d) In regards to the impact of noise, the application acknowledges that "[t]here are approximately 32 residences and one cemetery located either within the Project boundary or within one mile of the boundary." **Part 7.6.1.** Did the company include the Kessler residence in its listing of the 32 residences? Apparently not. If not, this omission alone constitute fraud on the PSC.

(e) "Minnesota Power has chosen a benchmark noise level of 50 dBA as the criterion for the noise evaluation." **Part 7.6.2.** "The minimum single turbine setback distance calculated where an exceedance of the 45 dBA benchmark would no longer occur is approximately 402 meters (1,320 feet) for the worst case turbine." **Part 7.6.2.**

(f) Impacts to nearby residents and other potentially affected parties in terms of noise will be taken into consideration as part of the actual siting of the turbines. **Part 7.6.3.** Again, note that the commitment presented to the PSC to take into account the impact on "nearby residences" does not differentiate between occupied and unoccupied residences, and of course the company

did not apply this guarantee to the Kessler residence. Indeed, the facts show that the representatives of the company promised the Kesslers that the turbine would not be within the 1400 OR 1320 feet, and yet that promise was not kept.

**3.** The fact that Minnesota Power failed to list the residence at issue as a potentially inhabited residence is at best misleading, and at worst fraud on the PSC. At the very least the residence should have been shown on the maps provided to the PSC through its application process, with a clear indication that the residence is capable of being used as a residence and that the landowners have indicated to the company that the intend to use the residence in the near future and most certainly within the life of the turbine.

**4.** The statutory intent of the exclusion and avoidance areas is clear, and if any doubt existed as to the use of a residence – that is, if there was any possibility that the residence would be inhabited as it relates to the effects of the wind tower – then any such doubt should have been in favor of the landowner. Moreover, at the very least this issue should have been disclose in the application and to the hearing officer at the public hearing in light of the assertions made to the public and to the public service commission relating to the company's stated "commitment to integrity, honesty and responsible, fair business practices." Letter sent by ALLETE Clean Energy to all landowners, including Keith and Deanna Kessler) (Jan. 4, 2012)

## B. SENTENCE 2

**¶16 "At the time of siting turbines for the Bison 4 development, the building that has since been remodeled was not occupied and was in disrepair."**

**1.** This is simply false information. Whoever provided this information to Todd Simmons is lying. And Minnesota Power is covering its mistake by trying to falsely claim that the residence is not only unoccupied, but incapable of being used as a residence and essentially abandoned.

**2.** The company was repeatedly told by the Kesslers that the residence was merely *temporarily* unoccupied and their son was going to live in the residence when he got back from college. Moreover, the residence was not "since" remodeled and at the time of the project development incapable of being used as a residence.

As shown above, the residence was used as a residence and second home from 1989 to the present. The fact that the Kessler boys were in college for a short time does not change the fact that the house throughout the development of the entire project was capable of being used as a residence; it had furniture, running water, working toilet, full kitchen, carpet, and full heating. Yes, general maintenance and upkeep occurred; in 2012 a new coat of paint was administered on the outside; in 2016 new flooring was installed and the interior was painted; in 2016 the shingles were replaced and some new windows were installed; in 2018 another new coat of paint was administered as well as a few more windows were installed. But none of this supports the false statement by the company that the building has "since been remodeled" and "was in disrepair." People were living in it before, during and after the project development. The residence was used before the throughout the construction phase and Minnesota Power was specifically told by the Kesslers repeatedly during the planning and construction phase (2009 – 2015) that it was a residence and was going to continue to be used as a residence the moment their son returned from college in the Spring of 2015.

**3.** Prior to the submission of the Minnesota Power letter of May 29, 2018 (which clearly provides incorrect information to the PSC), in February of 2017 Keith Kessler raised the issue of Turbine 441 being placed too close to his Section 15 residence with Commissioner Attorney John Schuh. When this issue was raised by PSC staff with the company, Minnesota Power advised PSC staff "that this residence was unoccupied at the time Bison 4 was permitted and constructed." Minnesota Power also asserted to PSC staff that "[b]ased on photographs and electric usage at the residence MN Power concludes that it became occupied during the last year." Internal File Doc. No. 2, page 2. It appears that PSC staff took Minnesota Power at its word and did not check with the Kesslers to determine what the facts were in regards to the use of this property or whether the Kesslers had at any time before, during, or after the hearing advised Minnesota Power that the residence was previously used as a residence and that the residence was fully capable of being occupied and would be occupied in the near future due to the Kessler's son returning to live in that residence. **PSC Informal File I-15-0195, Doc. 2, page 2, 3-1-17 Staff Memo.** PSC staff also opined in its internal memorandum that the rules relating to the siting application process would not apply to

"unoccupied or abandoned residences" – but again, it appears that PSC staff took Minnesota Power at its word and did not make any inquiry of the Kesslers as to whether this home was indeed an unoccupied or abandoned residence. **PSC Informal File I-15-0195, Doc. 2, page 2, 3-1-17 Staff Memo.**

**4.** The PSC staff reviewed the hearing recording to determine what issues were raised by Mr. Kessler at the hearing and concluded that the Kesslers did not "bring up the residence" at the hearing. However, there does not appear to be any inquiry of the Kesslers as to whether the issue of the residence being too close to Turbine 441 was indeed raised by the Kesslers as a concern to Minnesota Power on the day of hearing; Keith did not raise this issue on the record because the maps provided at the hearing did not make it clear what the actual distance would be to the residence, and because Minnesota Power informed the Kesslers before Keith spoke at the hearing that the company would insure that the tower was not within 1400 feet because Minnesota Power is obligated to follow the law and not place the turbine within 1400 feet of a residence. **PSC Informal File I-15-0195, Doc. 2, page 2, 3-1-17 Memo.**

**5.** The acceptance by PSC staff of the Minnesota Power's after-the fact rationale for ignoring the Kessler Section 15 residence is especially baffling given the meeting held with the Kesslers on Good Friday [April 14, 2017] where both Commissioner Attorney John Schuh and Commission Staff Member Jerry Lein were present when the Kesslers clearly indicated that "Deanna said we told you that it looked too close to the property line and that one of our sons was going to live in the house. At that time Scott Monroe agreed that we did tell him and Wade that. Then Wade said do you get it in writing? Keith then said, "[Damn] it I thought I could trust you, I thought we were in a partnership together." See above footnote 7 and text to which the footnote applies.

**6.** The staff memorandum dated May 15, 2017, regarding the April 14 Good Friday meeting with Minnesota Power, the Kesslers, John Schuh, and Jerry Lein, is entirely consistent with the Kesslers position that they had informed Minnesota Power that the residence would be occupied by their son "before the turbine was sited." **Doc. 109, page 3**, which is also filed at **Doc. 137, page 4**; also filed as **PSC Informal File I-15-0195, Doc. 22, page 4, 3-1-17 Staff Memo.**

## C. SENTENCE 3

**¶17 "Because that structure wasn't being lived in, the setback requirement of 1400' did not apply to that building."**

**1.** This is simply an attempt to find an excuse for justifying its failure to determine the facts, ignoring the Kesslers repeated statements, and presenting a false narrative to the PSC.

**2.** The structure was capable of being used as as residence, had recently been used as a residence, and – most importantly – was *intended* to be used as a residence in the very near future.

**3.** If the PSC accepts this charade, then all of the protections afforded to landowners are a sham and all a company has to do is redefine any of the conditions to suit its needs and discard the rights and interest of North Dakota landowners.

## D. SENTENCE 4
## Doc. 147, Minnesota Power Letter 5-29-18, Para. 5

**¶18 "Additionally, at no time, including at the PSC's public hearing on the Bison 4 wind project development, were issues raised regarding either the location of Tower 441 or plans to remodel and inhabit the abandoned building."**

**1.** If there is any statement made by the company that should give the PSC pause about the legitimacy of this company doing business in North Dakota, it should be this sentence. It is patently false and the company knew or should have known that it is false.

**2.** The Kesslers prior to the public hearing told both Scott and Wade about their concerns that Turbine 441 would be too close to the residence.

**3.** The Kesslers prior to the public hearing told both Scott and Wade that the residence was not "an abandoned building" but was a residence that had recently been used by other family members and was intended to be used by their son when he returned from college.

**4.** Because of their concern the Kesslers before the public hearing requested from the company the map that showed the planned location of Turbine 441; interestingly, despite this request the company did not provide a map to the Kesslers prior to the hearing and they discovered at the public hearing that Turbine 441 was indeed going to be too close to their residence.

**5.** The Kesslers at the public hearing, after reviewing the map, did indeed raise the issue of the location of Turbine/Tower 441 – which the company certainly knows. As noted above, when the Kesslers raised the issue at the hearing Matt basically yelled at the Kesslers, telling them "we don't have time to move things around due to the tax credits, we have to get started, this isn't the place for it, we can meet latter and discuss it." This occurred in the presence of several Minnesota Power representatives.

## E. SENTENCE 5

**¶19 "Minnesota Power is not responsible for the choice made to move to the turbine by renovating and living in that building."**

**1.** The home was capable of being used as a residence and the attempt to assert that it could be lived in only after being "renovated" is patently false. The Kesslers did not "move" to the turbine; the house was there, used before and during the project, and occupied on either side of the actual construction of the Turbine 441. Moreover, the Kesslers repeatedly told the company that they planned on using it as soon as their son returned from college.

**¶20** The Kesslers specifically allege the following misconduct relating to Minnesota Power:

1. Providing incorrect information to the PSC or a landowner.
2. Lying to a landowner.
3. Preventing or dissuading a landowner to present concerns to the PSC at its public hearing conducted under the authority of the PSC for that very purpose.
4. Failing to properly protect the land and interests of the landowner during construction of the project.

5. the map presented to the PSC failed to include a residence owned by the Kesslers;
6. the existence of this residence was relayed repeatedly to the company before the public hearing;
7. the company did not update the map or inform the hearing officer of this issue;
8. when this issue was raised at the public hearing by the Kesslers the company took active steps to dissuade the Kesslers from raising the issue at the hearing;
9. the company subsequently met with the Kesslers and guaranteed that the company would follow the law and that the turbine would not be within 1400 feet of the residence;
10. the company nonetheless placed the turbine within 1125 feet of the residence;
11. following a meeting with the Kesslers on May 11, 2018 (where the Kesslers raised the issue of the placement of Turbine 441), Todd Simmons of Minnesota Power issued a letter dated May 29, 2018, addressed to the Kessler (that was filed with the PSC) that contained patently false information, most particularly the false assertion that the residence had been "abandoned," which was nothing more than a convenient argument made up after-the-fact by Minnesota Power to provide a false justification for all of its mistakes and failures to to provide the PSC with proper information as to the Kessler section 15 residence;
12. the purpose of this Simmons letter dated May 29, 2018, was to present to the Kesslers – and more importantly to the PSC – facts and conclusion that would provide an excuse for Minnesota Power to have improperly placed Turbine 441 within 1400 feet of a residence and to convince the PSC that Minnesota Power had not done anything wrong in regards to the placement of Turbine 441.

## II. STATEMENT OF ISSUES

**¶21** At the PSC's request, we provide a listing of the issues which we believe need to be determined in this matter:

**ISSUE 1**: Is Turbine 441 improperly placed and in violation of Minnesota Power's application, in violation of the requirements placed upon Minnesota Power by the PSC's order accepting approving that application, or in violation of any North Dakota statute or regulation?

**ISSUE 2**: Did Minnesota Power provide incorrect or false information in its application, particularly in regards to the placement of turbine 441 and the failure to show the Kessler's residence on the listing and exhibits of avoidance or exclusion areas?

**ISSUE 3**: Did Minnesota Power provide any misinformation or false information to the Kessler's?

**ISSUE 4**: During the hearing September 13, 2013, did Minnesota Power divide any incorrect information to the Kessler's or take any steps to dissuade prevent the Kessler's from raising the issue about the location of turbine 441 at the hearing?

**ISSUE 5**: Following the hearing of September 13, 2013, did Minnesota Power make any promises to the Kessler's in regards to the placement of turbine 441?

**ISSUE 6**: At the Good Friday meeting that occurred on April 14, 2017, with the Kessler's, Minnesota Power, and representatives of the public service commission, did Minnesota Power provide any incorrect or false information relating to the placement of turbine 441?

**ISSUE 7**: Following the filing of the complaint by the Kessler's, did Minnesota Power provide any incorrect or false information in regards to what previously occurred, with the Kesslers had told them, or the history of the residence at issue?

**ISSUE 8**: Should Minnesota Power be required to move turbine 441 away from the Kessler residence?

**ISSUE 9**: In the event the Public Service Commission determines that Minnesota Power acted in any way improperly in regards to dealing with the Kessler's, the placement of Turbine 441, or responding to the complaint of the Kessler's, what sanction should the PSC apply to Minnesota Power?

**ISSUE 10:** but the applicable sanctions that the public service commission can employ limited by citing provisions, or instead does the public service commission have the inherent authority and Power to administer sanctions beyond that listed in the citing statute?

**ISSUE 11:** In the event the Public Service Commission determines that Minnesota Power acted in any way improperly in regards to dealing with the Kessler's, the placement of Turbine 441, or responding to the complaint of the Kessler's, should Minnesota Power be prohibited from conducting any additional utility business in the state of North Dakota?

**ISSUE 12:** In the event the Public Service Commission determines that Minnesota Power acted in any way improperly in regards to dealing with the Kessler's, the placement of Turbine 441, or responding to the complaint of the Kessler's, should Minnesota Power be prohibited from submitting any future applications to the Public Service Commission?

We acknowledge that the PSC and the opposing party may have additional issues. In addition, we hereby reserve the right to submit further issues based on discovery, any request by the PSC, and in response to any issues raised by Minnesota Power.

## III. REQUESTED RELIEF

**¶22** In regards to resolving the improper placement of Turbine 441, the Kesslers' propose the following relief:

1. Require Minnesota Power to provide complete internal file.

2. Require Sound Study by Independent Entity.

3. If sound study indicates a violation of the application, the PSC's Order, or any North Dakota law or regulation, require Minnesota Power to fix problem or move turbine.

4. Require Flickering Study by Independent Entity.

5. If flickering study indicates a violation of the application, the PSC's Order, or any North Dakota law or regulation, require Minnesota Power to fix problem or move turbine.

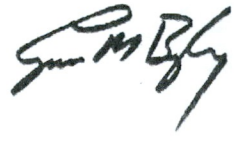
6. Have the PSC conduct a survey of other landowners to determine if Minnesota Power has a pattern of misconduct relating to North Dakota landowners.

7. Prohibit Minnesota Power from any further operations in North Dakota.

8. Reimbursement for damages incurred for damage to Section 15, devaluation of Section 15, as well as personal damages for inconvenience, nuisance, and emotional distress.

9. Order Minnesota Power to reimburse all attorney fees incurred by the Kesslers relating to the prosecution of this action.

**¶23** Dated this 29th day of June, 2020.



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