

Hamre, John G.

From: efilmingmail@tylerhost.net
Sent: Tuesday, September 14, 2021 10:42 AM
To: Hamre, John G.
Subject: Filing Accepted for Case: 08-2021-CV-01508; Nodak Electric Cooperative, Inc. vs. North Dakota Public Service Commission, et al.; Envelope Number: 4452039

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Filing Accepted

Envelope Number: 4452039

Case Number: 08-2021-CV-01508

Case Style: Nodak Electric Cooperative, Inc. vs. North Dakota Public Service Commission, et al.



The filing below was reviewed and has been accepted by the clerk's office. You may access the file stamped copy of the document filed by clicking on the below link.

Filing Details	
Court	Burleigh County - South Central District
Case Number	08-2021-CV-01508
Case Style	Nodak Electric Cooperative, Inc. vs. North Dakota Public Service Commission, et al.
Date/Time Submitted	9/13/2021 4:23 PM CST
Date/Time Accepted	9/14/2021 10:40 AM CST
Accepted Comments	
Filing Type	Exhibit
Filing Description	CR Exhibit 26 Affidavit of Charles Olson - Exhibit 1 to Brief
Activity Requested	EFileAndServe
Filed By	John Hamre
Filing Attorney	John Schuh

Document Details	
Lead Document	26 - CR Exhibit 26 Affidavit of Charles Olson - Exhibit 1 to Brief.pdf
Lead Document Page Count	10
File Stamped Copy	View Stamped Document
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North Dakota Court's Information Technology Department 701-328-4218
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Further, this affiant sayeth naught.

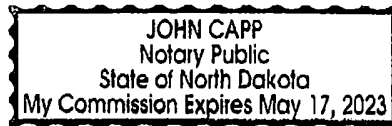
Charles Olson
Charles Olson

STATE OF NORTH DAKOTA)
) SS
COUNTY PEMBINA)

Before me, a notary public in and for said County and State, personally appeared Charles Olson and acknowledged that he did sign the foregoing instrument and that the same is his free and voluntary act and deed.

In testimony whereof, I have set my hand at Drayton, North Dakota, on this 11 day of December, 2020.

John Capp
Notary Public



ORDINANCE NO. 51

An Ordinance granting to the Otter Tail Corporation, a Minnesota Corporation, its successors and assigns, permission to erect, construct, install and maintain within the City of Drayton, an electric light and power system and transmission lines and to operate the same and to install conduits, poles, wires, pipes and other fixtures in, upon and under the streets, alleys, bridges, and public grounds of said City for the purpose of furnishing electric light, heat and power to said City and the inhabitants thereof.

BE IT ORDAINED, BY THE CITY COUNCIL OF THE CITY OF Drayton, North Dakota,
Hereinafter called the "City":

SECTION 1

There is hereby granted to Otter Tail Corporation, a Minnesota Corporation, its successors and assigns, hereinafter called the Grantee, for a period of twenty (20) years from and after the passage and approval of this Ordinance and during all of said time, subject to the conditions and requirements hereinafter set forth, permission to construct, install and maintain an electric light and power system and transmission lines and to operate and maintain the same within and through the City and to transmit electricity to and from other towns or cities for the purpose of light, power and heat and to erect, construct, install and maintain conduits, poles, wires, pipes and other necessary fixtures and attachments upon and under the streets, alleys, bridges and public grounds of said City for the purpose of furnishing and selling electricity for light, heat and power and such other purposes for which electricity may be used by the inhabitants of said City, said permission and franchise to become operative and continue under the conditions hereinafter set forth.

SECTION 2

Said Grantee shall use poles, wires, crossarms, equipment and devices to conform with the standards of construction adopted by the National Electrical Safety Code of the United States, Department of Commerce, and all apparatus connected therewith shall be located so as not to obstruct the avenues, streets, and alleys of said City or to endanger persons or property or to hinder or to obstruct the use of said avenues, streets, and alleys for public places by the inhabitants of said City, or public in general, or to interfere with any street, sidewalk, curb, gutter or park improvements that the City may deem proper to make along the lines of said avenues, streets and public places.

SECTION 3

All conduits, poles, wires and pipes installed by virtue of this Ordinance shall be installed in such places and in such manner as not unnecessarily to encroach upon streets, alleys, bridges, or public grounds of said City, and so as not to unnecessarily obstruct the use thereof for the ordinary purpose of travel thereon, and the erection thereof shall be subject to the reasonable supervision and direction of the City Council of the said City. Whenever practicable, all poles shall be set in alleys, and poles now in position upon or along the streets, whenever practicable, shall be removed, and the locations of all of said poles shall be designated by the Mayor under the supervision of the City Council of the said City.

All poles where set in alleys shall be set at or near the boundary line thereof, and where set in streets shall be located at such distances, as shall be directed by the city, from the property line of the abutting owner, and shall be placed so as not to interfere with the construction of placing of any waterpipes, sewers, or drains or the flow of water therefrom which have been or may be placed by authority of said City. In the event that said Grantee shall make any unnecessary obstruction of said streets, alleys, public grounds or places not designated by the City Council, the City may cause the removal of such obstructions and charge and collect from such Grantee the actual cost of such removals.

SECTION 4

During the construction, maintenance or enlargement of any part of said electric light and power system, said Grantee shall not unnecessarily impede or block travel in said streets and highways in said city, and shall leave all streets, highways, alleys, sidewalks, curbs, lanes and public places and all grounds disturbed by said construction in good condition upon the completion of said work.

The City reserves the right for itself and its agents to make and adopt, and the rights and privileges hereby granted shall at all times be and remain subject to, such reasonable regulations of a police nature as it may deem necessary for the best interests of the City but the City will not by an such regulations or by acts of its own or agents do anything to prevent or interfere with the Grantee carrying on its business in accordance with the franchise hereby granted.

SECTION 5

Whenever the said Grantee in erecting, constructing and maintaining said lines or poles, shall take up any of the pavements, sidewalks crossings or curbs on any of the avenues, streets and alleys or public places in said City or shall make any excavations thereon; such excavations shall be refilled and the sidewalk, crossing or curb replaced under the direction of the said City and any excavation so made shall be properly lighted at night during the construction, and in case of the failure to do so on the part of the said Grantee, then the said City may do the same at the expense of said Grantee and said Grantee agrees to pay said City for the reasonable cost or value of said work. Said Grantee shall be liable for all loss or damage caused by the negligence of Grantee, which may result to persons or property within the said City, caused by it, or its agents, servants, or employees in erecting, operating and maintaining the said electric system within said City, and shall at all times save the City harmless from any and all damages to persons or property in erecting, operating or maintaining said electric system.

SECTION 6

There is granted to said Grantee, its successors and assigns, during the term hereof, permission and authority to trim all trees in alleys, streets and public grounds of said City so as to remove all parts of said trees interfering with the proper erection maintenance and operation of poles, cables, wires, masts or other fixtures, or appliances installed or to be installed pursuant to authority hereby granted.

Said Grantee shall have full right and authority to assign any person, persons, firm or corporation all the rights that are given it by this Ordinance, provided that the assignee of such rights by accepting such assignment shall become subject to the terms and conditions of this Ordinance.



SECTION 7

The Grantee shall use due diligence and care in furnishing electric service as herein provided but shall not be liable for any loss or damage which may arise from failure of the service, either partial or total, but this shall not be construed to exempt said Grantee from liability for negligence.

SECTION 8

The rates to be charged by said Grantee in the said City shall be filed with the Public Service Commission of the State of North Dakota, and no increase or decrease in said rates shall be made except in accordance with the rules and regulations of the Public Service Commission.

SECTION 9

This contract shall be subject to any present or future laws of a regulatory nature enacted by the State of North Dakota, or an amendment or addition to such laws and further shall be subject to the rules and regulations laid down by the Public Service Commission of the State of North Dakota.

SECTION 10

The City reserves the right during the term hereof to enact and assess a franchise fee such as it deems necessary, upon reasonable advance notice to Grantee of not less than thirty (30) days.

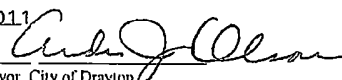
SECTION 11

In the event the City should sell or transfer real property which is subject to Grantee's franchise and should it become necessary to remove conduits, poles, wires or pipes installed by virtue of this ordinance the removal shall be done at the expense of the Grantee upon the request of the City.

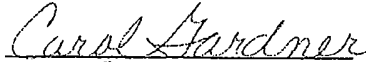
Section 12

This Ordinance shall take effect and be in full force from and after its passage and approval by the City Council. The said Grantee shall specify its acceptance of this franchise in writing, to be filed with the City Auditor and in no event shall this Ordinance be binding on said Grantee until the filing of such acceptance.

Approved this 3rd day of May, 2011


Mayor, City of Drayton

Attest


Title City Auditor
City Auditor, City of Drayton

ACCEPTANCE

OTTER TAIL POWER COMPANY, a Minnesota corporation, acting through its proper officers thereunto duly authorized, does hereby accept Ordinance No. 51 of the City of Drayton, North Dakota, being an Ordinance granting a franchise to Otter Tail Power Company, and being entitled:

"AN ORDINANCE GRANTING TO THE OTTER TAIL POWER COMPANY, A MINNESOTA CORPORATION, ITS SUCCESSORS AND ASSIGNS, PERMISSION TO ERECT, CONSTRUCT, INSTALL, AND MAINTAIN WITHIN THE CITY OF DRAYTON, NORTH DAKOTA, AN ELECTRIC LIGHT AND POWER SYSTEM AND TRANSMISSION LINE, AND TO OPERATE THE SAME, AND TO INSTALL CONDUITS, POLES, WIRES, PIPES, AND OTHER FIXTURES IN, UPON AND UNDER THE STREETS ALLEYS, BRIDGES, AND PUBLIC GROUNDS OF SAID CITY FOR THE PURPOSE OF FURNISHING ELECTRIC LIGHT, HEAT, AND POWER TO SAID CITY AND THE INHABITANTS THEREOF";

and all of the terms, conditions, requirements, and provisions of said Ordinance No. 51.

IN WITNESS WHEREOF, Otter Tail Power Company has caused this Acceptance to be duly executed this 2nd day of June, 2011.

In Presence of:


OTTER TAIL POWER COMPANY,

Becky Lehning
Diane Meyer

By Chuck MacFarlane
President
And Bruce Gerhardson
Associate General Counsel,
Otter Tail Power Company

STATE OF MINNESOTA)
)SS
COUNTY OF OTTER TAIL)

On this 2nd day of June, 2011, before me, a Notary Public within and for said County, personally appeared Chuck MacFarlane and Bruce Gerhardson to me personally known, who, being each by me duly sworn, did say that they are, respectively, the President, and Associate General Counsel of Otter Tail Power Company, the corporation named in the foregoing instrument, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors, and said Chuck MacFarlane and Bruce Gerhardson acknowledged said instrument to be the free act and deed of said corporation.

 PENNY MICHELLE MOSHER
Notary Public-Minnesota
My Commission Expires Jan 31, 2015
(Notarial Seal)

Penny Michelle Mosher

The foregoing Acceptance was duly filed in the office of the City Auditor of the City of Drayton, North Dakota, this 17th day of July, 2011.

Carol Gardner
City Auditor

CERTIFICATE

STATE OF NORTH DAKOTA)
)SS
COUNTY OF PEMBINA)

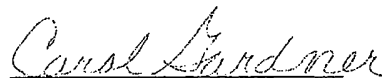
I, Carol Gardner, do hereby certify that I am the duly appointed, qualified, and acting City Auditor of the City of Drayton, North Dakota, and as such have possession, custody, and control of all of the books, files, and records of said City; that the attached _____ pages are true and correct copies of each of the following instruments:

1. Ordinance No. 51, granting a franchise to Otter Tail Power Company, a Minnesota corporation, which is duly recorded in the Ordinance Book of said City on pages _____.
2. Affidavit of Publication of said Ordinance No. 51 and that the newspaper stated in said Affidavit of Publication is the official newspaper of said City;
3. Acceptance by Otter Tail Power Company of said Ordinance No. 51 together with the date of filing the same with the undersigned as Auditor of said City;

as the originals of each of said instruments and the whole thereof, are contained in the official books and records on file in my office; and that I have compared each of said instruments, and the whole of each of the same, with the originals thereof appearing in the official books and records on file in my office and that the same, and each of them are true and correct copies thereof.

I FURTHER CERTIFY that no petition requesting a referendum on the adoption of the foregoing ordinance was filed with the City within the time period permitted by North Dakota Century Code, Section 40-12-08.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 1st day of August, 2011.



City Auditor

(Official City Seal)

ADDITION

RTH DAKOTA
 QUARTER SECTION 26, T159N, R51W

LEGEND

	5/8" x 18" LONG REBAR, MONUMENT WITH CAP MARKED BY U.C. NO. LS-6703
	MONUMENT FOUND
	SUBJECT PROPERTY LINE
	EXISTING PROPERTY LINE
	EASEMENT LINE
	ACCESS CONTROL LINE
	EXISTING CONTOUR LINE
	AREA NOT WITHIN 100 YEAR FLOODPLAIN

OWNERS DESCRIPTION AND DEDICATION

KNOW ALL MEN BY THESE PRESENTS, That Tyler L.E. McFarland and Christine McFarland, husband and wife, owners of a parcel of land located in that part of the North Half of the Northwest Quarter of Section 26, Township 159 North, Range 51 West of the Fifth Principal Meridian, Pembina County, North Dakota, being more particularly described as follows:

That part of the North Half of the Northwest Quarter of Section 26, Township 159 North, Range 51 West, 5th Principal Meridian, Pembina County, North Dakota, lying westerly of the west right of way line of Interstate Highway 29, less and except the North 164.00 feet thereof.

Containing 16.408 acres, more or less.

Said owners have caused the above described parcel of land to be surveyed and platted as "McFARLAND'S ADDITION" to the City of Drayton, Pembina County, North Dakota, and do hereby dedicate to the public, for public use, the streets, avenues and utility easements as shown on this plat and do hereby dedicate to Lot 1 the 30 foot wide private utility easement in Lot 2 for the purposes so stated.

OWNER:

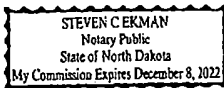
By: Tyler L.E. McFarland

By: Christine McFarland

State of North Dakota }
 County of Pembina } ss

On this 8 day of August, 2019 before me, a notary public within and for said County and State, personally appeared Tyler L.E. McFarland and Christine McFarland, husband and wife, known to me to be the people that are described in and who executed the within instrument, and acknowledged to me that they executed the same as a free act and deed.

Notary Public



BENCHMARK

NGS MONUMENT "ROBBIN" THE MARK IS A PUNCH MARK ON THE TOP OF A DRIVEN 1/2 INCH DIAMETER BY 28 FT LONG STAINLESS STEEL ROD WITH A 3 FT PLASTIC STABILIZER SLEEVE. ACCESS TO THE DATUM POINT IS THROUGH A 5 INCH LOGO CAP THAT IS FLUSH WITH THE GROUND, STAMPED - ROBBIN 1984 - SET ON TOP OF A 5 INCH DIAMETER BY 24 INCH LONG PVC PLASTIC PIPE FILLED WITH SILICA SAND AND SET IN CONCRETE. A METAL SPIKE WAS PLACED IN THE SILICA SAND MAKING THE MARK MAGNETIC. THE MARK IS LOCATED IN THE NW 1/4 OF SECTION 28, T159N, R50W, 0.9 MILES EAST OF THE TOWN OF ROBBIN, 0.9 MILE EAST ALONG TRUNK HIGHWAY 11 FROM THE BRIDGE OVER THE RED RIVER, AT TRUNK HIGHWAY 11 MILEPOINT 0.9, 80.5 FEET SOUTH OF TRUNK HIGHWAY 11, 72 FEET EAST OF TOWNSHIP ROAD, 45.0 FEET NORTH-NORTHEAST OF A POWER POLE, 3.1 FEET EAST OF A WITNESS POST. ELEVATION = 798.60 NAVD88 DATUM.

DRAYTON CITY COUNCIL APPROVAL

By resolution duly passed by the City Council of Drayton, North Dakota, this 12th day of August, 2019, the plat of "McFARLAND'S ADDITION", as shown herein was duly approved and accepted and the plat ordered filed in the office of the Recorder of Pembina County North Dakota; a copy of the same to be filed in the office of the City Auditor.

Charles Olson, Mayor

Date: 8/15/2019

Attest:
 Grace Puppe, City Auditor

Date: 8/15/19

255638

Page 1 of 1
 Pembina Co. Clerk Recorder Recorded: 9/19/2019 at 10:20 AM
 Return To: STEVEN C. EKMAN P.C.
 PO BOX 70

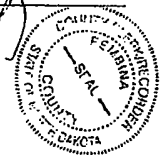
GRAFTON NO 58237

255638

\$20.00

Pembina Co. Clerk Recorder, ND 8/19/2019 10:20 AM
 I certify that this instrument was filed for record this date
 KAY NEWELL BRAGET, County Recorder

By:



SURVEYOR'S CERTIFICATE AND ACKNOWLEDGEMENT

I, Gregg Stroeing, Registered Professional Land Surveyor under the laws of the State of North Dakota do hereby certify that this plat is a correct representation of the survey, that all distances shown are correct and that the monuments for the guidance of future surveys have been located or placed in the ground as shown and that the outside boundary lines are correctly designated on the plat.

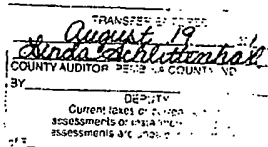
Gregg Stroeing, Professional Land Surveyor
 North Dakota License Number LS-6703

Date: 8/2/19

State of North Dakota }
 County of Cass } ss

On this 2 day of AUGUST, 2019 before me, a notary public within and for said County and State, personally appeared Gregg Stroeing, Professional Land Surveyor, known to me to be the person who is described in and who executed the within instrument, and acknowledged to me that he executed the same.

Notary Public



RESOLUTION AUTHORIZING EXPANSION OF ELECTRICAL SERVICE TO
MCFARLAND'S ADDITION TO THE CITY OF DRAYTON

The following Resolution was presented on April _____, 2020 at a regularly called meeting of the City of Drayton, to wit:

RECITALS

WHEREAS, the City of Drayton (City) has authority under North Dakota Constitution Article VII, § 11 and N.D.C.C. § 40-05-01(57) to grant a franchise to a company to provide electric services within the municipal boundaries of the City; and

WHEREAS on May 3, 2011, by Ordinance 51, the City granted to Otter Tail Power Company, its successors and assign, "permission to erect, construct, install and maintain within the city of Drayton an electric light and power system and transmission line, and to operate the same, and to install conduits, poles, wire, pipes, and other fixtures in, upon and under the streets, alleys, bridges, and public grounds of said City for the purpose of furnishing electrical light, heat, and power to said City and the inhabitants thereof;" and

WHEREAS, on August 19, 2019, a new subdivision to the City of Drayton was platted and annexed into the City known as McFarland's Addition to the City of Drayton, contained within the N1/2NW1/4-26-159-51 lying westerly of the West right of way of Interstate Highway 29; and

WHEREAS on November 4, 2019 a Deed was recorded to transfer Lot 1 of Block 1 of McFarland's Addition to the City of Drayton to Roserock Holdings LLC with the intention of developing there a Love's Truck Stop facility; and

WHEREAS Love's Truck Stop desires to utilize the existing franchise the City has with Otter Tail Power Company to provide electrical power to said premises; and

WHEREAS Otter Tail Power Company is obligated under its existing franchise agreement to provide electrical services to McFarland's Addition to the City of Drayton; and

WHEREAS the City desires to facilitate the efficient and unified operation of electrical services in the City.

NOW THEREFORE in consideration of the recitals herein contained, BE IT RESOLVED that Otter Tail Power Company's franchise to provide electrical services within the City of Drayton in accordance to Ordinance 51 be extended without ambiguity to McFarland's Addition.

Approved: _____

Chris Miller
Mayor

Attest: _____

Shari Kozzi
Auditor



EXPEDITION ESTATES:

HARTZE CONSTRUCTION INC. EQUIP. LIST

- (2) 613 CAT PADDLE SCRAPERS
- (1) 950 CAT WHEEL LOADER
- (1) 772 CH JOHN DEERE MOTOR GRADER
- (1) TS-14 C TEREX SCRAPER
- (1) 1997 FORD WATER TRUCK
- (1) TRACTOR AND DISC
- (1) BOBCAT 763 SKIDSTEER
- (1) 1990 FORD TANDEM END DUMP

HARTZE CREW WILL CONSIST OF 4 OPERATORS.

