

SOUTH DAKOTA BOARD OF REGENTS

Budget and Finance

AGENDA ITEM: 7 – T (1)

DATE: March 27-29, 2018

SUBJECT

Sioux Valley-South Western Electric Easement Resolution (SDSU)

CONTROLLING STATUTE, RULE, OR POLICY

SDCL [5-2-10](#) & [5-2-11](#).

BACKGROUND / DISCUSSION

Sioux Valley-Southwestern Electric is seeking to replace and relocate a section of its existing distribution line that runs across a portion of the land occupied by SDSU. The land in question is located in rural Brookings County and is currently used for cattle grazing. The new location of the distribution line does not unnecessarily interfere with SDSU’s use of the land.

IMPACT AND RECOMMENDATION

South Dakota State University (SDSU) requests that the Board of Regents adopt the Resolution set forth in Attachment I requesting the grant of an easement to Sioux Valley-Southwestern Electric to place, construct, operate, repair, maintain, relocate and replace thereon an electrical transmission and distribution line or system. The foregoing will allow Sioux Valley-Southwestern Electric to relocate its powerline on SDSU’s grassland property near Volga.

Staff recommends approval.

ATTACHMENTS

Attachment I – Resolution Requesting the Grant of an Easement to Sioux Valley-Southwestern Electric

Attachment I, Exhibit I – Draft Easement to Sioux Valley-Southwestern Electric

DRAFT MOTION 20180327_7-T(1):

I move to approve and adopt the Resolution set forth in Attachment I, requesting the Commissioner of School and Public Lands to proceed with the easement as stated therein.

RESOLUTION

Resolution requesting the grant of an easement in, on, over, under, and across portions of land occupied by South Dakota State University for the use and benefit of Sioux Valley-Southwestern Electric.

The South Dakota Board of Regents (hereinafter referred to as “Grantor”), on behalf of South Dakota State University, in consideration of one dollar (\$1) and other good and valuable consideration, and pursuant to the authority vested in Grantor under SDCL § 5-2-11, hereby requests the Commissioner of School and Public Lands to draw up all necessary documents and to forward them to the Governor to request their execution in order to grant to Sioux Valley-Southwestern Electric, an easement to place, construct, operate, repair, maintain, relocate, and replace thereon a distribution line or system in, on, over, under, and across the following described property:

The East 25 feet (25’) excluding the Public Right of Way of real property in Brookings, County, South Dakota, described as follows: the (E1/2E1/2) of Section (32) Township (111) North, Range (51) West of the 5th P.M; and

The North 25 feet (25’) excluding the Public Right of Way of real property in Brookings, County, South Dakota, described as follows: The (E1/2E1/2) of Section (32) Township (111) North, Range (51) West of the 5th P.M.

Grantor requests that any grant of easement be consistent with, or responsive to the issues identified, in the draft grant of easement prepared by the Office of School and Public Lands and attached hereto as Exhibit I, without restricting the ability of the parties to further revise and finalize the details of the final document(s).

Grantor requests that any grant of easement provides that Grantor shall not be liable for any personal injury, property damage, or other liability to Grantee, its agents, employees, invitees, or to any other party caused by or related to Grantee’s use of the premises, irrespective of how such injury or damage may be caused, whether by action of the elements or acts of negligence of Grantee or any other party, and that Grantee further agree to reimburse Grantor for any judgment against it arising from Grantee’s use of the property.

Dated this ____ day of March, 2018

SOUTH DAKOTA BOARD OF REGENTS

By _____

Bob Sutton

President

Certification:

I have compared the foregoing with an action taken by the Board of Regents at a regular meeting of the Board in Spearfish, South Dakota, on the ____ day of March, 2018, and I hereby certify that the same is a true, correct, and complete copy thereof and that the same has not been rescinded.

Dated this ____ day of March, 2018

SOUTH DAKOTA BOARD OF REGENTS

By _____

John W. Bastian

Secretary

**This document prepared by:
Office of School and Public Lands
(605)773-3303
500 East Capitol Avenue
Pierre, South Dakota 57501-5070**

**EASEMENT
(RIGHT-OF-WAY FOR ELECTRICAL DISTRIBUTION LINE)**

FOR AND IN CONSIDERATION OF THE SUM OF One (\$1.00) dollar, the receipt of which is hereby acknowledged, the Office of School and Public Lands on behalf of the State of South Dakota Board of Regents (SDBR), hereinafter referred to as Grantor, does hereby grant and convey unto Sioux Valley-Southwestern Electric, a Cooperative, Grantee, of 47092 SD Highway 34, Colman, South Dakota, 57017, an electrical transmission and distribution line easement, subject to the conditions hereinafter set forth, in, on, over, under, and across the following described property:

The East 25 feet (25') excluding the Public Right of Way of real property in Brookings, County, South Dakota, described as follows: the (E1/2E1/2) of Section (32) Township (111) North, Range (51) West of the 5th P.M.

The North 25 feet (25') excluding the Public Right of Way of real property in Brookings, County, South Dakota, described as follows: The (E1/2E1/2) of Section (32) Township (111) North, Range (51) West of the 5th P.M.

This grant is subject to the following conditions:

1. Such easement shall include the right to enter at any time and from time to time, and to construct, reconstruct, erect, repair, rebuild, operate, patrol, remove, and maintain all necessary equipment, fixtures, and appurtenances and; the right to clear the way and keep it clear of brush, trees, buildings, and fire hazards; and the right to remove trees, if any including but not limited to: electric transmission and/or distribution line or system on or under the above-described lands and/or in, upon or under all streets, roads or highways abutting said lands. Grantor agrees that the rights contained herein are intended to benefit the Grantee, the subtenants of Grantee, and any sub-subtenants, including their successors or assigns.
2. Grantor agrees that this easement may not be modified or revised in a manner that would diminish the rights of Grantee, its successors or assigns.
3. This easement is granted subject to all existing rights of way and easements over and upon the property.

4. Grantor reserves the right to utilize the property for all purposes not inconsistent with the easement rights herein conveyed. Grantor or Grantee may enter upon the above described property for the purposes of effectuating the grant of and reserved rights in this easement.
5. The electric transmission and/or distribution line or system shall be constructed in a good and workmanlike manner, and all disturbed area shall be restored to a finished grade.
6. The Grantee will be responsible for all costs and liabilities regarding the installation, maintenance and use of an electric transmission and/or distribution line or system on or under the above-described easement area. This grant is subject to the further condition that Grantor shall not be liable for any personal injury, property damage, or other liability to Grantee, its agents, employees, invitees, or to any other party caused by or related to Grantee's use of the premises, irrespective of how such injury or damage may be caused, whether by action of the elements or acts of negligence of Grantee or any other party, and that Grantee further agrees to reimburse Grantor for any judgment against it arising from Grantee's use of the property. For any claims arising out of the Grantee's installation, maintenance and use of the electric transmission and/or distribution line or system and above-described easement area, Grantee agrees to indemnify, defend and hold Grantor harmless. Nothing in this agreement shall be read to waive Grantor's sovereign immunity.
7. The Grantee shall maintain the surface area of the easement following construction. The property which is the subject of this easement shall be kept free of all obstructions.
8. If the above described real property granted by this easement ceases to be used for an electric transmission and/or distribution line or system for two (2) consecutive years the easement terminates and reverts to Grantor.
9. The Grantor has and retains the right to lease, sell, or otherwise convey the property or any party thereof, subject to the terms of this easement, provided, however, that this easement shall remain in full force and effect until the expiration of the terms hereof notwithstanding such a lease, sale or conveyance. The above described easement is subject to a reservation of further easements and rights-of way for irrigation ditches and canals, as provided by South Dakota Codified Laws 5-4-2, so long as they do not infringe upon the rights granted hereunder. This easement is also subject to reservations and rights relating to deposits of coal, ores, metals and other minerals, asphaltum, oil, gas and other like substances provided by the South Dakota Constitution Art. VIII, §19, South Dakota Codified Law 5-7-3 to 5-7-6, inclusive, and South Dakota Codified Law § 5-2-12, and in any law of the

State of South Dakota reserving any rights of any kind in said State or any of its departments, institutions, subdivisions, funds or accounts.

10. This easement shall be binding upon the heirs, executors, administrators, assigns, and successors in interest of the parties hereto, and the failure of Grantee or any person or entity succeeding to its interest to comply with the conditions stated herein shall cause the easement to terminate and to revert to Grantor or any person or entity succeeding to its interest.

11. This easement shall be governed by and construed in accordance with the laws of the State of South Dakota.

IN WITNESS WHEREOF, the STATE OF SOUTH DAKOTA has caused this Instrument to be executed in the name of the State, by the Governor and attested to by the Commissioner of School and Public Lands and the Grantee has set its hand and seal this ____ day of _____, 2018.

APPROVED BY:

GRANTOR
STATE OF SOUTH DAKOTA

GRANTEE
Sioux Valley-Southwestern Electric

By: _____

Dennis Daugaard, Governor

By: _____

Title: _____

ATTEST BY:

OFFICE OF SCHOOL AND PUBLIC LANDS

Ryan Brunner, Commissioner

STATE OF SOUTH DAKOTA)
) ss
COUNTY OF HUGHES)

On this ____ day of _____, 2018, before me the undersigned Notary Public within aforesaid County and State, personally appeared Dennis Daugaard, Governor, known to me to be the person described herein who executed the within and forgoing instrument for the purposes therein contained and acknowledged to me that he executed the same.

Notary Seal

Notary Public

Commission Expires

STATE OF SOUTH DAKOTA)
) ss
COUNTY OF HUGHES)

On this ____ day of _____, 2018, before me the undersigned Notary Public within aforesaid County and State, personally appeared Ryan Brunner, Commissioner of South Dakota School and Public Lands, known to me to be the person described herein who executed the within and forgoing instrument for the purposes therein contained and acknowledged to me that he executed the same.

Notary Seal

Notary Public

Commission Expires

STATE OF SOUTH DAKOTA)
) ss
COUNTY OF _____)

On this ____ day of _____, 2018, before me the undersigned Notary Public within aforesaid County and State, personally appeared _____, known to me to be the person described herein who executed the within and forgoing instrument for the purposes therein contained and acknowledged to me that he executed the same.

Notary Seal

Notary Public

Commission Expires