

SOUTH DAKOTA BOARD OF REGENTS

Budget and Finance

AGENDA ITEM: 4 – S
DATE: December 11-12, 2019

SUBJECT

West Central Electric Co-op, Inc. Easement Resolution (SDSU)

CONTROLLING STATUTE, RULE, OR POLICY

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

BACKGROUND / DISCUSSION

West Central Electric Co-op, Inc. is seeking a right-of-way easement for the construction, reconstruction, replacement, modification, upgrading, extension, removal, maintenance, and operation of an electrical service line and all necessary and appurtenant of structures, fixtures and controls. This easement and right-of-way will be constructed across real property owned by SDSU in order to provide electrical services to the SDSU Cottonwood Field Station. The land in question is located in Jackson County. The easement will not 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 West Central Electric Co-op, Inc. to construct, reconstruct, replace, modify, upgrade, extend, remove, maintain, and operate electrical transmission and distribution lines, cable TV lines, data communication lines, and all necessary and appurtenant of structures, fixtures and controls. The foregoing will allow West Central Electric Co-op, Inc. to move forward with providing electrical services to SDSU at its Cottonwood Field Station.

Staff recommends approval.

ATTACHMENTS

- Attachment I – Resolution Requesting the Grant of an Easement to West Central Electric Co-op
- Attachment I, Exhibit I – Draft Easement to West Central Electric Co-op

DRAFT MOTION 20191211_4-S:

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 through, under, in, on and across portions of land occupied by South Dakota State University for the use and benefit of West Central Electric Co-op, Inc.

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 West Central Electric Co-Op, Inc. of Murdo, South Dakota, an easement to construct, reconstruct, replace, modify, upgrade, extend, remove, maintain, and operate electrical transmission and distribution lines, cable TV lines, data communication lines, and all necessary and appurtenant of structures, fixtures and controls for the operation and maintenance of electrical services through, under, in, on and across the following legally described real estate within Jackson County:

The Southeast (SE) Quarter (1/4) of Section 17, Township 1 South, Range 19 EBHM, Jackson County, South Dakota, as further shown in WCEC Map #148 which is Exhibit A to Exhibit I, a copy of which is attached hereto and incorporated herein.

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 December, 2019.

SOUTH DAKOTA BOARD OF REGENTS

By _____

Kevin V. Schieffer

President

Certification:

I have compared the foregoing with an action taken by the Board of Regents at a regular meeting of the Board in Sioux Falls, South Dakota, on the ____ day of December, 2019, 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 December, 2019.

SOUTH DAKOTA BOARD OF REGENTS

By _____

Jim Morgan

Secretary

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

**STATE OF SOUTH DAKOTA
PERMANENT EASEMENT**

THIS EASEMENT is made and entered by and between the State of South Dakota acting through its Governor and Commissioner of School and Public Lands on behalf of the South Dakota Board of Regents, 500 East Capitol, Pierre, South Dakota, 57501 [the "State"] and West Central Electric Co-op, Inc., P.O. Box 17, Murdo, South Dakota, 57559 ["West Central Electric"].

WHEREAS, West Central Electric is desirous of acquiring a right-of-way easement for the construction, reconstruction, replacement, modification, upgrading, extension, removal, maintenance, and operation of electrical transmission and distribution lines, cable TV lines, data communication lines, and all necessary and appurtenant of structures, fixtures and controls across land belonging to the State, and the State is desirous of cooperating with West Central Electric for said easement.

NOW THEREFORE THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. For and in consideration of the sum of One dollar (\$1.00), the receipt of which is hereby acknowledged and other valuable consideration set forth in this Easement, the State hereby grants and conveys to West Central Electric a right-of-way easement for the following described purposes: the right to construct, reconstruct, replace, modify, upgrade, extend, remove, maintain, and operate electrical transmission and distribution lines, cable TV lines, data communication lines, and all necessary and appurtenant of structures, fixtures and controls, through, under, in, on and across the following legally described real estate within the County of Jackson, State of South Dakota, more

commonly known as the SDSU Cottonwood Field Station (the “Easement Area”):

The Southeast (SE) Quarter (1/4) of Section 17, Township 1 South, Range 19 EBHM, Jackson County, South Dakota, as further shown in WCEC Map #148, which is attached hereto as Exhibit A and incorporated herein by this reference as if set forth in full.

2. West Central Electric agrees that any construction will not interfere unnecessarily with the State’s use of its adjoining property and will not endanger or injure any improvements thereon. The State reserves the right to utilize the Property for all purposes not inconsistent with the easement rights herein conveyed. The State and/or West Central Electric may enter upon the above described property for the purposes of effectuating the grant of and reserved rights in this easement.

3. West Central Electric further agrees, at no cost to the State, to be responsible for the operation, repair, maintenance, replacement, or removal of the utilities or structures installed by West Central Electric and associated with the operation and maintenance of said utilities or structures.

4. West Central Electric further understands and agrees, that to the extent provided by South Dakota law, it shall be liable for all damages caused by the construction, operation, maintenance, enlargement, upgrade, repair, alteration, removal or replacement of the utilities or structures installed by West Central Electric and associated with the operation and maintenance of said utilities or structures, and West Central Electric agrees to indemnify, defend, and hold the State harmless for the same. Nothing in this agreement shall be read to waive Grantor’s sovereign immunity.

5. West Central Electric further understands and agrees that the State has and retains the right to lease, sell or otherwise convey the Easement Area, or any part thereof, provided, however, that this Easement shall remain in full force and effect until the expiration of the term hereof notwithstanding such lease, sale or conveyance. In addition, 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 a reservation of rights relating to deposits of coal, ores, metal and other minerals, asphaltum, oil, gas and like substances provided South Dakota

Constitution Art. VIII, §19, South Dakota Codified Laws 5-7-3 to 5-7-6, inclusive and South Dakota Codified Laws 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.

6. In consideration of this Easement, West Central Electric will not impose special assessments on the State to pay for connection costs to West Central Electric that may be associated with the development of the above described area.

7. The land herein described is to be used for the utilities or structures associated with the operation and maintenance of electrical services and no other purpose whatsoever, and that should the above described real property granted by this Easement cease to be used for said purposes for two consecutive years, this Easement reverts to the State or its successor and assigns.

8. This agreement and attachments shall constitute the entire agreement between the State and West Central Electric. This agreement supersedes any other written or oral agreements between the State and West Central Electric pertaining to the Easement Area, or any portion thereof. This agreement can be modified only in writing and signed by the State and West Central Electric or their respective heirs, representatives, executors, administrators, successors and assigns.

9. This easement shall be binding upon the heirs, executors, administrators, assigns, and successors in interest of the parties hereto.

10. This Easement is governed by and shall be construed in accordance with the laws of the State of South Dakota.

11. This Easement shall be binding upon the heirs, executors, administrators, assigns and successors in interest of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Easement on this ____ day of _____, 20__.

STATE OF SOUTH DAKOTA

BY: _____

Kristi Noem
Governor

ATTEST:

Ryan Brunner
Commissioner of School and Public Lands

WEST CENTRAL ELECTRIC
CO-OP, INC.

BY: _____

ATTEST:

ACKNOWLEDGMENTS

STATE OF SOUTH DAKOTA)
) ss
COUNTY OF HUGHES)

On this ____ day of _____, 20____, before me the undersigned Notary Public within aforesaid County and State, personally appeared Kristi Noem, 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 she executed the same.

Notary Seal

Notary Public – State of SD

Commission Expires

STATE OF SOUTH DAKOTA)
) ss
COUNTY OF HUGHES)

On this ____ day of _____, 20____, 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 – State of SD

Commission Expires

STATE OF SOUTH DAKOTA)
) ss
COUNTY OF _____)

On this ____ day of _____, 20____, before me, the undersigned officer, personally appeared _____, who acknowledged him/herself to be the _____ of West Central Electric Co-op, Inc., and that s/he, as _____, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of West Central Electric Co-op, Inc., as _____.

Notary Seal

Notary Public – State of SD

Commission Expires



West Central Electric Cooperative, Inc.

P.O. Box 17, Murdo, South Dakota 57559
South Dakota 42, Lyman

