

SOUTH DAKOTA BOARD OF REGENTS

Budget and Finance
Consent

AGENDA ITEM: 5 – K
DATE: October 5-6, 2022

SUBJECT

Xcel Energy Easement – USD-SF

CONTROLLING STATUTE, RULE, OR POLICY

[SDCL § 5-2-10](#)

[SDCL § 5-2-11](#)

BACKGROUND / DISCUSSION

Xcel Energy Company is seeking an easement for construction of an electric distribution easement across a portion of the land occupied by the University of South Dakota (USD) in Minnehaha County. The location of the transmission line does not unnecessarily interfere with USD’s use of the land.

IMPACT AND RECOMMENDATION

USD requests that the Board of Regents adopt the Resolution set forth in Attachment I requesting the grant of an easement to Xcel Energy to erect, construct, reconstruct, replace, repair, use, maintain, and operate an electric distribution line, together with all necessary and appurtenant incidental structures and appliances necessary for the operation and maintenance of such line. The foregoing will allow Xcel Energy to locate and/or maintain a portion of its electric distribution line on USD’s property in Minnehaha County.

Staff recommends approval.

ATTACHMENTS

Attachment I – Resolution Requesting the Grant of an Easement to Xcel Energy
Attachment I, Exhibit I – Draft Easement to Xcel Energy

DRAFT MOTION 20221005_5-K:

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 the University of South Dakota for the use and benefit of Xcel Energy, Inc.

The South Dakota Board of Regents (hereinafter referred to as “Grantor”), on behalf of the University of South Dakota, in consideration of five thousand dollars (\$5,000) 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 ratify, effectuate, or grant to Xcel Energy, Inc., an easement to erect, construct, reconstruct, replace, repair, use, maintain, and operate electrical transmission line(s), together with all necessary and appurtenant incidental structures and appliances necessary for the operation and maintenance of such electrical line(s) through, under, in, on and across the following legally described real estate within the Minnehaha County:

A 20’ ELECTRIC DISTRIBUTION EASEMENT (10’ EACH SIDE OF CENTERLINE) OVER, ACROSS & UPON A PART OF TRACT 1, EXCEPT LOT A THEREOF, TRACTS 2 & 3 OF UNIVERSITY CENTER RESEARCH PARK ADDITION TO THE CITY OF SIOUX FALLS, MINNEHAHA COUNTY, SOUTH DAKOTA, as further shown in Exhibit A to Exhibit I, a copy of which is attached hereto and incorporated herein.

Grantor requests that any ratification, effectuation, or 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, negotiate, and finalize the details of the final document(s).

Grantor requests that any ratification, effectuation, or 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 October, 2022

SOUTH DAKOTA BOARD OF REGENTS

By _____

Pam Roberts

President

Certification:

I have compared the foregoing with an action taken by the Board of Regents at its meeting conducted on the ____ day of October, 2022, 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 October, 2022

SOUTH DAKOTA BOARD OF REGENTS

By _____

Tony Venhuizen

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 the Xcel Energy, Inc. [“Xcel”].

WHEREAS, Xcel is desirous of retaining a right-of-way easement for the construction, reconstruction, replacement, modification, upgrading, extension, removal, maintenance, and operation of an electric distribution line, and all necessary and appurtenant structures, fixtures and controls across land belonging to the State, and the State is desirous of cooperating with Xcel for said easement.

NOW THEREFORE THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. For and in consideration of the sum of five thousand dollars (\$5,000), the receipt of which is hereby acknowledged and other valuable consideration set forth in this Easement, the State hereby grants and conveys to the Xcel a right-of-way easement for the following described purposes: the right to construct, reconstruct, replace, modify, upgrade, extend, remove, maintain, and operate electric distribution line utilities, and all necessary and appurtenant of structures, fixtures and controls, through, under, in, on and across the following legally described real estate within the City of Sioux Falls, Minnehaha County, South Dakota (the “Easement Area”):

A 20’ ELECTRIC DISTRIBUTION EASEMENT (10’ EACH SIDE OF CENTERLINE) OVER, ACROSS & UPON A PART OF TRACT 1, EXCEPT LOT A THEREOF, TRACTS 2 & 3 OF UNIVERSITY CENTER RESEARCH PARK ADDITION TO THE CITY OF SIOUX FALLS, MINNEHAHA COUNTY, SOUTH DAKOTA, as further shown in Exhibit “A”, a copy of which is attached hereto and incorporated into this agreement, the same as if written at length herein.

2. Xcel 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 Xcel may enter upon the above described property for the purposes of effectuating the grant of and reserved rights in this easement.

3. Xcel 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 Xcel and associated with the operation and maintenance of said utilities or structures.

4. Xcel 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 Xcel and associated with the operation and maintenance of said utilities or structures, and Xcel 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. Xcel 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. The land herein described is to be used for the utilities or structures associated with the operation and maintenance of water and sewer utilities 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.

7. This agreement and attachments shall constitute the entire

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

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

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

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

STATE OF SOUTH DAKOTA

BY: _____
Kristi Noem
Governor

ATTEST:

Jarrod Johnson
Commissioner of School and Public Lands

Xcel Energy Company, Inc

BY: _____

ATTEST:

ACKNOWLEDGMENTS

Easement to the Xcel Energy Minnehaha County

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 Jarrod Johnson, 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)

