

STATE OF NEW MEXICO  
COMMISSIONER OF PUBLIC LANDS  
GRANT OF RIGHT-OF-WAY

Right-of-Way Easement No. RW-29657

This indenture, made this 8<sup>th</sup> day of February, 20 06 by and between the State of New Mexico, acting by and through its Commissioner of Public Lands, "Grantor" Duke Energy Field Services, L.P. whose address is 370 17<sup>th</sup> Street, Suite 2500, Denver, CO 80202, "Grantee";

WITNESSETH:

That Grantor, for and in consideration of the sum of \$34,743.80 ~~-----~~ Thirty-Four Thousand Seven Hundred Forty-Three Dollars and 80/100 ~~-----~~ cash in hand, receipt of which is hereby acknowledged, and other good and valuable consideration, hereby conveys to grantee a right-of-way for the sole and exclusive purpose of three buried pipelines - 1-10" gas, 1-4" fuel gas, and 1-4" utility line plus a surface facility on the entire SW 1/4 of Section 30, T 18S, R 37E with a 1500x1500 fenced facility consisting of a compressor station, injection well, and well pad SEE STIPULATION ON PAGE 3 including the right to enter upon the real estate hereinafter described at any time that it may see fit to construct, maintain and repair the structures upon the right-of-way, together with the right to remove trees, brush, undergrowth, and other obstructions interfering with the location, construction, and maintenance of said right-of-way.

The right-of-way hereby granted covers a strip of land 30 feet in width in Lea County (ies), as more particularly described by the attached centerline description and survey plats, which are incorporated herein.

This grant is made upon the following express terms and conditions:

1. This right-of-way is granted for a term of 35 years. The grant may be renewed for additional periods upon application to Grantor. Any such renewals are subject to such terms and conditions as the Grantor may require, and payment of compensation.
2. Grantor reserves the right to authorize or grant rights-of-way or other easements to third parties, which may be parallel to, cross over or bisect this right-of-way. In such cases, the subsequent grantee may, at the discretion of the Grantor, be required to post a bond guaranteeing payment for damages to the installations and improvements of Grantee herein. In crossing any right-of-way for a highway, road, telephone, telegraph, transmission line, etc. Grantee herein will exercise due care so as not to interfere with said rights-of-way and will comply with all applicable laws, rules, and regulations in connection with the making of such crossings.
3. The right to grant additional rights-of-way or easements within this right-of-way belongs exclusively to Grantor. Grantor hereby agrees, however, that in the event Grantor elects to exercise such right and if Grantee herein is the New Mexico State Highway and Transportation Department, Grantor will secure in writing the agreement of subsequent right-of-way grantee that no facilities will be constructed or installed within the right-of-way subsequently granted without first obtaining from the Department a permit prescribing the conditions under which facilities may be placed within such right-of-way in accordance with the Department's applicable rules and regulations.
4. GRANTEE EXPRESSLY AGREES THAT PRIOR TO THE CONSTRUCTION OR INSTALLATION OF ANY FACILITIES WITHIN THE RIGHT-OF-WAY GRANTED HEREIN, GRANTEE WILL DETERMINE WHETHER THE RIGHT-OF-WAY IS WITHIN A PREVIOUSLY ESTABLISHED NEW MEXICO STATE HIGHWAY AND TRANSPORTATION DEPARTMENT RIGHT-OF-WAY, AND IF IT IS, GRANTEE WILL OBTAIN FROM THE DEPARTMENT A PERMIT THAT PRESCRIBES THE CONDITIONS UNDER WHICH

NMOCD CASE NO. 13589

MARCH 13, 2006

SMITH, SNYDER & AC

EXHIBIT NO. 3

(2)

Right-of-Way Easement No. RW-29657

FACILITIES MAY BE PLACED WITHIN THE RIGHT-OF-WAY IN ACCORDANCE WITH THE DEPARTMENT'S APPLICABLE RULES AND REGULATIONS. GRANTEE FURTHER UNDERSTANDS AND AGREES THAT THE FAILURE TO OBTAIN SUCH PERMIT SHALL RESULT IN THE FORCIBLE REMOVAL BY THE DEPARTMENT OF ANY FACILITIES THAT MAY BE CONSTRUCTED OR INSTALLED WITHIN THE RIGHT-OF-WAY.

5. In clearing the right-of-way, Grantee agrees to dispose of brush and other debris so as not to interfere with the movement of livestock of state agriculture lessees.
6. All pipelines placed on said lands by virtue of this grant shall be buried not less than twenty inches (20") deep. An exception to this requirement may be granted on other than agricultural lands when hard rock is encountered which would require blasting, or when a temporary pipeline is necessary and will not unduly hamper other surface uses. Deviation of the twenty-inch depth must be shown on the plat accompanying the application for right-of-way or by the filing of an amended plat upon completion of construction.
7. Grantee hereby agrees to carefully avoid destruction or injury to any improvements or livestock lawfully upon the premises described herein, to close all gates immediately upon passing through same, and to pay promptly the reasonable and just damages for any injury or destruction arising from construction or maintenance of this right-of way.
8. Grantee shall not assign this right-of-way without the prior written approval of Grantor. Such approval may be conditioned upon the agreement by Grantee's assignee to additional conditions and covenants and may require payment of additional compensation to Grantor. This right-of-way is for the sole purpose stated and no other. Grantee agrees not to sell or otherwise grant to any person or entity any interest therein or the right to use any portion thereof.
9. The rights granted herein are subject to valid existing rights.
10. Grantor reserves the right to execute leases for oil and gas, coal, and minerals of whatsoever kind and for geothermal resources development and operation, the right to sell or dispose of same and the right to grant rights-of-way and easements related to such leasing.
11. In all matter affecting the premises described herein or operations thereon, Grantee, its employees, agents and contractors shall, at their own expense, fully comply with all laws, regulations, rules, ordinances, and requirements of any governmental authority or agency, which may be enacted or promulgated, including, but not limited to, requirements or enactment's pertaining to conservation, sanitation, aesthetics, pollution, cultural properties, fire, or ecology, including those provisions of the New Mexico Cultural Properties Act, §§18-6-1 through 17, NMSA 1978, that attach criminal penalties to the appropriation, excavation, injury or destruction of any site or object of historical, archaeological, architectural, or scientific value located on state lands. In addition, Grantee, its employees, agents and contractors must comply with the provisions of the Pipeline Safety Act, §§ 70-3-11 through 20, NMSA 1978, and rules enacted pursuant to the Act, and agree to provide the Public Regulation Commission access to records of compliance.
12. Non-use of the right-of-way granted herein for any period in excess of one (1) year without the prior written consent of Grantor shall be conclusive proof of abandonment of the right-of-way, and non-use for shorter periods shall place upon grantee the burden of providing that there was no intent to abandon. Grantee, if other than a governmental entity that is provided immunity

(3)

Right-of-Way Easement No. RW-29657

from suit by the New Mexico Tort Claims Act, agrees to save and hold harmless, defend and indemnify the State of New Mexico, the Commissioner of Public Lands, and his agents or employees, in their official and individual capacities, of and from any and all liability, claims, losses, or damages arising out of or alleged to arise out of or indirectly connected with the operations of Grantee, its employees, agents, or contractors hereunder.

13. Notwithstanding anything contained herein, Grantor may cancel this grant for violation of any of the covenants of this agreement; provided, however, that before any such cancellation shall become effective, Grantor shall mail to grantee or any approved assignee, by certified mail addressed to the post office address of Grantee or such assignee shown by Land Office records, a thirty (30) day notice of intention to cancel, specifying the default for which the grant is subject to cancellation. No proof of receipt of notice shall be necessary and thirty (30) days after such mailing, Grantor may enter cancellation unless Grantee shall have sooner remedied the default to the satisfaction of Grantor.
14. Grantee agrees to preserve and protect the natural environmental conditions of the land encompassed in this grant, and to take those reclamation or corrective actions that are accepted soil and water conservation practices and that are deemed necessary by Grantor to protect the land from pollution, erosion, or other environmental degradation.
15. Grantee agrees to reclaim by grading, leveling, or terracing all areas disturbed by the construction or maintenance of the right-of-way or operations thereon and to landscape such areas at its own cost and expense. Landscaping shall include the planting of native grasses, shrubs, or other vegetation so as to return disturbed areas to their natural state and prevent water and wind erosion.
16. This grant shall become effective upon its execution by Grantor.

**STIPULATION:**

A final plan of the design, construction, maintenance and safety testing of the pipeline and all reports dealing with pipeline and process safety design must be acceptable to the Grantor before construction begins. Between the time this Right-of-Way is executed and the beginning of construction, Grantee will provide Grantor with a design for the acid gas injection well surface and subsurface equipment which will be certified and stamped by a professional engineer licensed in New Mexico.

A final plan of the design, construction, maintenance and safety testing of the pipeline and all reports dealing with pipeline and process safety design will be submitted to the State Land Office (SLO) for review. Duke Energy Field Services, L.P. plans on utilizing its own in-house pipeline safety engineer and an outside third party process safety engineering firm

Duke Energy Field Services, L.P. will design, construct, pressure test, operate, and maintain the pipeline according to DOT 49 CFR 192 Transportation of Natural and Other Gases by Pipeline: Minimum Federal Safety Standards.

(4)

Right-of-Way Easement No. RW-29657

The pipeline will be constructed as a double-wall design with corrosion-resistant high density polyethylene (HDPE) liner inside a 10" carbon steel outer wall and buried at least 36" deep. The pipeline will have a Maximum Allowable Operating Pressure (MAOP) of approximately 100 psig and will be hydro tested to 1.5 times MAOP (about 150 psig). An external protective coating and cathodic protection will be applied to the outer pipe to help prevent external corrosion.

The pipeline is to be fully safety and utility tested upon its completion, and before use. The type and nature of these tests will be sent to the SLO for review. The results of this testing are to be submitted in full, to the SLO, immediately upon availability.

Emergency protocol and planning is to be detailed in writing and submitted to the SLO before transportation of material through pipeline may commence.

Integrity testing shall be submitted to the SLO immediately following completion, Duke Energy Field Services, LP will develop an Integrity Management Plan (IMP) that describes the testing and will submit this plan in full to the SLO immediately following completion.

The pipeline is to be monitored by Supervisory Control and Data Acquisition (SCADA) technology at all times, as well as a qualified individual familiar with acid-gas pipeline systems.

All normal day-to-day operating data, to include pipeline pressure and compressor discharge temperature, gathered by the SCADA technology is to be recorded and submitted to the SLO in full on a semi-annual basis.

The inner HDPE liner will be enclosed by a large diameter carbon steel pipe. The minimal annular space between the OD of the HDPE liner and ID of the steel pipe will have monitoring valves on each section of lined pipe to check the integrity of the HDPE liner during line patrols.

The pipeline will be marked with Duke Energy Field Services, L.P. pipeline markers and patrolled a minimum of 26 times each calendar year with intervals not exceeding 3 weeks between patrols. A report is to be generated immediately following each patrol, a copy of which must be forwarded to the SLO on a semi-annual basis.

#### PAYMENT

An annual payment of five thousand dollars (\$5,000.00) will be made by the Grantee during years one and two of the Right-of-Way. In year three, the Grantee may elect to pay a lump sum of three hundred fifteen thousand dollars (\$315,000.00) or pay according to the attached payment schedule.

(5)

Right-of-Way Easement No. RW-29657

Right-of-Way Easement No. RW-29657

GRANTEE:

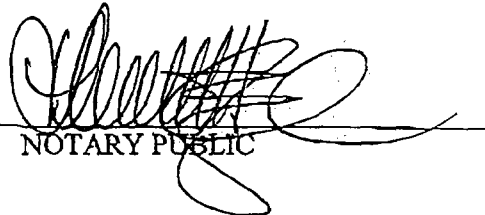
By: Ocean Munds Dry

## ACKNOWLEDGMENT

STATE OF NEW MEXICO )  
COUNTY OF Santa Fe ) ss.

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of February, 20 06, by Ocean Munds Dry, of Attorney for Duke Energy a Field Services, Inc. Delaware corporation, on behalf of said corporation.

My Commission Expires:

January 14, 2007  
NOTARY PUBLICOFFICIAL SEAL  
LISAMARIE ORTIZ  
NOTARY PUBLIC-STATE OF NEW MEXICO  
My commission expires 1/14/07

STATE OF NEW MEXICO

BY: PATRICK H. LYONS  
COMMISSIONER OF PUBLIC LANDS

Right-of-Way Easement No. RW-29657

## PAYMENT SCHEDULE

| Year | AMT    |
|------|--------|
|      | \$     |
| 1    | 5,000  |
|      | \$     |
| 2    | 5,000  |
|      | \$     |
| 3    | 7,000  |
|      | \$     |
| 4    | 7,210  |
|      | \$     |
| 5    | 7,426  |
|      | \$     |
| 6    | 7,649  |
|      | \$     |
| 7    | 7,879  |
|      | \$     |
| 8    | 8,115  |
|      | \$     |
| 9    | 8,358  |
|      | \$     |
| 10   | 8,609  |
|      | \$     |
| 11   | 8,867  |
|      | \$     |
| 12   | 9,133  |
|      | \$     |
| 13   | 9,407  |
|      | \$     |
| 14   | 9,690  |
|      | \$     |
| 15   | 9,980  |
|      | \$     |
| 16   | 10,280 |
|      | \$     |
| 17   | 10,588 |
|      | \$     |
| 18   | 10,906 |
|      | \$     |
| 19   | 11,233 |
|      | \$     |
| 20   | 11,570 |
|      | \$     |
| 21   | 11,917 |
|      | \$     |
| 22   | 12,275 |
|      | \$     |
| 23   | 12,643 |
|      | \$     |
| 24   | 13,022 |
|      | \$     |
| 25   | 13,413 |

Right-of-Way Easement No. RW-29657

|       |         |
|-------|---------|
|       | \$      |
| 26    | 13,815  |
|       | \$      |
| 27    | 14,230  |
|       | \$      |
| 28    | 14,656  |
|       | \$      |
| 29    | 15,096  |
|       | \$      |
| 30    | 15,549  |
|       | \$      |
| 31    | 16,015  |
|       | \$      |
| 32    | 16,496  |
|       | \$      |
| 33    | 16,991  |
|       | \$      |
| 34    | 17,501  |
|       | \$      |
| 35    | 18,026  |
|       | \$      |
| Total | 395,545 |