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Iredell County, NC
Brenda D. Bell Register of Deeds
BK 2082 PG 279-284

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PREPARED BY: Karol P. Mack, Associate General Counsel, Duke Energy Corporation
Mail To: Duke Energy Corporation
c/o Heather P. Blum (EC03T)
P.O. Box 1006
Charlotte, NC 28201-1006

Site: 000097
Land Unit: 0004995
Project No: 000097-378195

STATE OF NORTH CAROLINA)
: **ENCROACHMENT AGREEMENT**
COUNTY OF IREDELL)

THIS ENCROACHMENT AGREEMENT ("Agreement") is made and entered into this 15th day of SEPTEMBER, 2010 by and between **DUKE ENERGY CAROLINAS, LLC** ("Grantor"), 526 South Church Street, Charlotte, North Carolina, 28202, and **JAMES CHAD BYERS** ("Grantee"), 164 Ponokah Lane, Statesville, North Carolina 28677.

WITNESSETH:

WHEREAS, Grantee is the owner of that certain land located in Iredell County, North Carolina, acquired by Grantee pursuant to that certain General Warranty Deed recorded in Deed Book 1119 at Page 1130 in the Office of the Register of Deeds for Iredell County ("Grantee's Property"); and

WHEREAS, Grantor is the owner of a perpetual easement and right-of-way over, across and upon Grantee's Property in relation to: a) Grantor's Line Index Number 1L410, Structure T-123, with a Point-to-Point Name of Lookout Hydro to Stamy Tie; and b) Grantor's Line Index Number 10637, Structure T-85, with a Point-to-Point Name of Oxford Hydro – Stamy Tie; and upon which easement and right-of-way Grantor maintains an electric transmission line, said right-of-way being conveyed to Grantor by that certain instrument recorded in Book 673 at Page 323 in the Office of the Register of Deeds for Iredell County (the area of said easement and right-of-way being hereinafter referred to as "Grantor's Easement"); and

WHEREAS, Grantee desires the authority to encroach upon a portion of Grantor's Easement for the purpose of maintaining a septic drain field, and Grantor is willing to permit this encroachment (the "Permitted Encroachment") pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, for and in consideration of One Dollar ($1.00) paid by Grantee to Grantor, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, Grantor and Grantee do hereby covenant and agree to the following terms and conditions:

1. Grantor hereby grants to Grantee and Grantee's contractors permission to maintain the Permitted Encroachment over, across and upon those certain portions of Grantor's Easement containing approximately 0.05 ± acre shown as "Septic Repair Easement 0.05 Acres" on that certain plat of survey entitled "Boundary & Septic Easement Survey of 114 Water Tank Road," dated July 14, 2010, attached hereto as **Exhibit A** and incorporated herein by reference (the "Encroachment Area").

2. Grantee and its contractors shall be responsible for contacting Grantor and obtaining Grantor's permission prior to commencing any work pursuant to this Agreement or operating or transporting any equipment within the Encroachment Area that could jeopardize the safety and/or reliability of Grantor's transmission line.

3. Grantee and its contractors shall maintain a safe work clearance under the transmission line as defined by Grantor's engineering calculations. Grantee and/or its contractors shall obtain Grantor's specification for such safe work clearance in writing prior to any work being performed or equipment being operated or transported near the transmission line. If any construction work by Grantor is required to maintain safe work clearances, Grantee shall be responsible for the cost of such construction.

4. Grantee's use of Grantor's Easement shall comply at all times with Grantor's "Right of Way Restrictions," as the same shall be amended from time to time, a copy of which has been provided to Grantee.

5. Grantee shall maintain and communicate safe work practices under the transmission line and around associated transmission equipment.

6. In consideration for the rights granted to Grantee by Grantor hereunder, Grantee, for itself and its contractors, accepts such rights with the full understanding of the risk of loss of life, personal injury or property loss or damage which may arise out of Grantee's exercise of its rights as set forth herein, and Grantee agrees to exercise its rights hereunder at its own risk. Grantee shall not hold Grantor, its successors or assigns, liable for any loss, injury or damage which may occur to Grantee or its property whether such loss, injury or damage results from the negligence of Grantor, its successors or assigns, or otherwise, and Grantee hereby releases Grantor, its successors and assigns, from any loss, injury, damage or any claims related thereto.

7. Grantee and its contractors shall indemnify and hold harmless Grantor, its members, managers, officers, agents, employees, successors and assigns, from and against any and all losses, fines, liabilities, claims, demands, causes of action, costs and expenses (including without limitation, attorneys' fees) for personal injury (including death) or property damage to the extent such injury or damage shall result from, arise out of, or be attributable to, directly or indirectly, any construction work, maintenance work, or operations undertaken by Grantee or its contractors, or any other act or omission by Grantee or its contractors, upon Grantor's Easement. Such indemnification shall be effective even in cases where Grantor has given permission for work pursuant to this Agreement.