

EL97-020

In the Matter of *VS. ELK*
AT- C. M. S. S. S.

IN THE MATTER OF THE
 APPLICATION OF THE CITY OF
 VERMILION FOR DETERMINATION
 OF PURCHASE PRICE OF ELECTRIC
 FACILITIES IN ANNEXED AREAS

Public Utilities Commission of the State of South Dakota

DATE

MEMORANDUM

- 10/20/97 Filed and docketed;
 10/24/97. The City's Return;
 11/17/97. Applicant City of Vermilion's Request for Production of Documents to ^{Dependent} Respondent;
 11/17/97. Applicant's Interrogatories (First Set);
 1/5/98 Dependent's response to Applicant's Interrogatories (1st set) and Dependent's response to Applicant's Request for Production of Documents to Respondent;
 1/5/98 Dependent in Support of Order to Show Cause;
 1/8/98 Dependent in Support of Order to Show Cause;
 1/8/98 Motion for Order for Dependent's assets and assigning of electric utility service debt;
 1/8/98 Dependent's Order to Show Cause;
 1/8/98 Waiver of Dependent's support of Applicant's Motion to Show Cause;
 1/8/98 Certificate of Service;
 3/11/98 Order to Show Cause;
 3/13/98 Amended Order to Show Cause;
 4/17/98 Consent to Arbitration Continuance;
 4/29/98 Order for Continuance;
 7/2/98 Stipulation and Agreement;
 8/5/98 Order approving Stipulation and Closing of Docket;
 8/5/98 Docket Closed

014126

City of VERMILLION

25 CENTER STREET
VERMILLION, SOUTH DAKOTA 57069

PHONE: (605) 624-5641

EL97-020



October 16, 1997 RECEIVED

OCT 18 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Public Utilities Commission
State Capitol Building
500 East Capitol Avenue
Pierre, SD 57501-5070

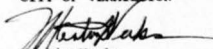
RE: City of Vermillion vs. Clay-Union Electric Corporation
Gentlemen:

Enclosed herewith please find the original and ten (10) copies of an Application for Determination of Purchase Price of Electric Facilities in Annexed Areas presented by the City of Vermillion. Will you kindly file these documents in your office. It is my understanding that upon filing the documents the Commission will set a time and place for hearing on the Application and will send out copies of its Order and Notice to the parties. If I am mistaken in this procedure, will you please advise me.

I am causing a copy of the Application to be served upon the respondent, Clay-Union Electric Corporation.

Thank you for your courtesies in this matter.

Yours truly,
CITY OF VERMILLION


Martin Weeks
City Attorney

MW/sd

Encl.

EL 97-020

RECEIVED

OCT 26 1937

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE
STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

THE CITY OF VERMILLION,	)	
a municipal corporation,	)	
	)	
Applicant,	)	
	)	APPLICATION FOR DETERMINATION
vs.	)	OF PURCHASE PRICE OF ELECTRIC
	)	FACILITIES IN ANNEXED AREAS
CLAY-UNION ELECTRIC CORP.,	)	
INCORPORATED, a corporation,	)	
	)	
Respondent.	)	

The applicant, the City of Vermillion, a municipal corporation, respectfully states:

I

The applicant is a municipal corporation, duly organized under the laws of the State of South Dakota, has a population in excess of 10,000 and is located in Clay County, South Dakota.

II

The post office address of the applicant's business office is 25 Center Street, Vermillion, South Dakota 57069.

III

The applicant owns and operates an electric utility serving consumers within the City and in certain prescribed adjacent areas.

IV

The respondent is a corporation organized under the laws of State of South Dakota for the purpose of supplying electric energy and promoting and extending the use thereof in rural areas.

V

The post office address of the respondent is 1410 East Cherry Street, P.O. Box 317, Vermillion, SD 57069.

8141.263

VI

The respondent owns and operates electric power transmission lines over which it transports and serves electric energy to consumers in a large rural area, including most of Clay and Union Counties and a portion of Yankton County, South Dakota.

VII

That part of respondent's service area, some of which lies within and some of which lies immediately adjacent to the City of Vermillion is graphically shown on the map, marked Exhibit A and by reference made a part hereof. Said map also shows the locations of three separate territories recently annexed by the applicant City and certain areas within said annexed territories now served by the respondent and in which the respondent has installed the facilities which are the subject of this proceeding. The legal descriptions of each annexed territory and of each of the respondent's service areas within the said annexed territories are also more particularly set forth in the succeeding paragraphs VIII, IX and X hereof.

VIII

On the 20th day of November, 1995 the applicant annexed a tract of real property legally described as follows:

The East Half (E 1/2) of the Southeast Quarter (SE 1/4) of Section Twelve (12), Township Ninety-two (92), Range Fifty-two (52) West of the 5TH P.M., except the West 732 feet of the North 1,475 feet thereof, Clay County, South Dakota.

Respondent currently has service rights in that portion of said annexed territory described as follows:

The North 220 feet of the West 298 feet of the East 588 feet of the East Half of the Southeast Quarter (E 1/2 SE 1/4) of Section 12, Township 92, Range 52, West of the 5th P.M.

and has installed electrical facilities to serve one consumer therein.

IX

On the 11th day of March, 1996 the applicant annexed a tract of real property legally described as follows:

Beginning at the Southwest section corner of Sec. 17-92-51 thence North 2652 feet on the center line of Crawford Road to the West 1/4 corner of Sec. 17-92-51 thence East 331 feet, thence South 548.86 feet, thence West 153 feet, thence South 777.57 feet, thence East 21.83 feet, thence South 1126.43

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feet, thence East 2452 feet, thence South 200 feet to the South 1/4 corner of Sec. 17-92-51 thence West 2169 feet on the center line of Main Street thence South 339 feet, thence West 285 feet, thence North 256 feet, thence East 68 feet, thence South 100 feet, thence East 126 feet, thence North 183 feet to center line of Main Street thence West 392 feet to point of beginning, all in Section 17-92-51 and 20-92-51, Clay County, South Dakota.

Respondent currently has service rights to the entire annexed territory and has installed underground electric facilities serving three consumers therein.

X

On the 12th day of April, 1996 the applicant annexed a tract of real property legally described as follows:

The West 1/2 of the NW 1/4 of Section 13, Township 92 North, Range 52 West of the 5TH P.M., Clay County, South Dakota, with the following exceptions: The South 660' of the SW 1/4 of the NW 1/4; and Lot H-1 of the West 1/2 of the NW 1/4; and the East 1/2 of the NE 1/4 of Section 14, Township 92 North, Range 52 West of the 5TH P.M., Clay County, South Dakota, with the following exceptions: The South 660' of the SE 1/4 of the NE 1/4; Lot H-2 of the East 1/2 of the NE 1/4.

Respondent currently has service rights in that portion of said annexed territory described as follows:

The West 1/2 of the NW 1/4 of Section 13, Township 92 North, Range 52 West of the 5TH P.M.: Clay County, South Dakota, with the exception of the South 660 feet of the SW 1/4 of the NW 1/4 and Lot H-1 of the West 1/2 of the SW 1/4.

and has installed electrical facilities along the East and South sides thereof, but serves no consumers therein.

XI

Exercising its statutory prerogative granted by SDCL 49-34A-49 the applicant, on the 21st day of October, 1996, through its duly constituted governing body, adopted a resolution to purchase those electric utility properties and service rights then owned by the respondent within each of the three aforementioned annexed areas. Said resolution further directed that notice in writing of the boundaries of said three annexed areas together with applicant's offer to purchase said electric distribution properties and rights to serve therein be given to the respondent. A copy of said

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XII

On the 30th day of October, 1996 (that date being within one year following the annexation of any of the said annexed areas) the applicant, in writing and by certified mail, notified the respondent of the boundaries of the annexed areas and communicated to the respondent its offer to purchase the electric distribution properties of the Defendant located in said annexed areas together with all its rights to serve such areas for a cash consideration to be determined in the manner provided by SDCL 49-34A-50 to 49-34A-52, inclusive, and to be calculated in accordance with the formula set forth in SDCL 49-34A-50. A copy of said notice, attached maps required by SDCL 49-34A-49, letter of transmittal and proof of mailing are collectively marked Exhibit C and attached hereto and made a part hereof.

XIII

On the 25th day of May, 1997, by letter to Jeff Pederson, the respondent informed the applicant that it would not consent to the conditions set forth in the October 30, 1996 Notice of Intent and ever since that date has declined to consent. In the process anticipated in SDCL 49-5A-52, consequently, the parties have been unable to agree as to the amount of cash consideration to be paid by the applicant to the respondent. A copy of respondent's letter of May 29, 1997 is marked Exhibit D and is hereto attached.

WHEREFORE the applicant requests that the Commission, after notice and hearing, determine the amount of the payment to be made by the applicant to the respondent in accordance with SDCL 49-34A-50.

Dated at Vermillion, South Dakota, this 15 day of
October, 1997.

THE CITY OF VERMILLION,
a municipal corporation

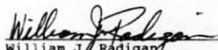
Marvin Weeks
City Attorney
P.O. Box 435
Vermillion, SD 57069
(605) 624-2619

BY: William J. Radigan
William J. Radigan, Mayor
Municipal Building
25 Center Street
Vermillion, SD 57069
(605) 677-7056

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STATE OF SOUTH DAKOTA)
 :SS
COUNTY OF CLAY)

William J. Radigan, being first duly sworn on his oath deposes and says that he is the duly elected, qualified and acting mayor of the City of Vermillion, a municipal corporation, named as applicant in the above and foregoing application and that he has read the same and knows the content thereof except as to those matters stated on information and belief, and as to those matters he believes it to be true.



William J. Radigan

Subscribed and sworn to before me this 15 day of October, 1997.



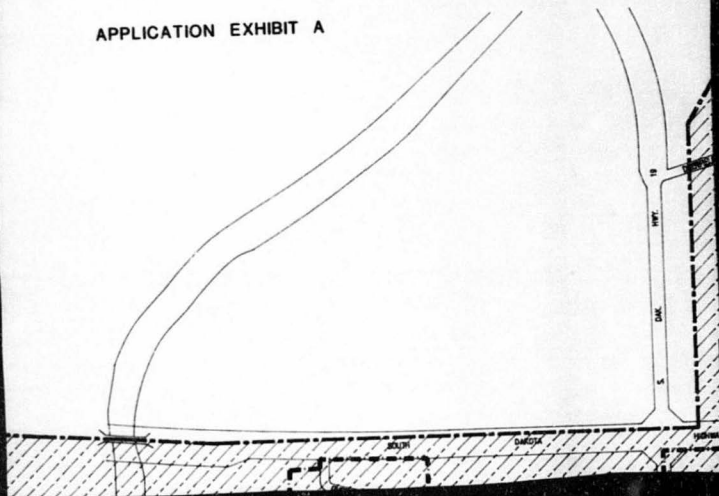
Notary Public

(SEAL)

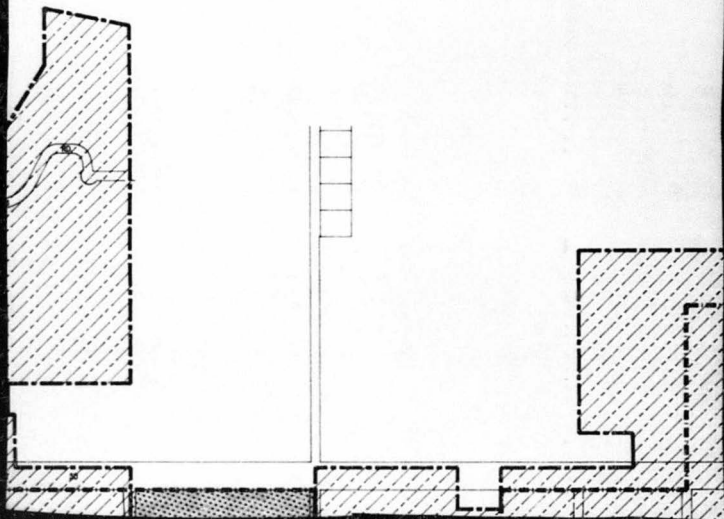
My Commission Expires: 7-5-2005

0141:26:7

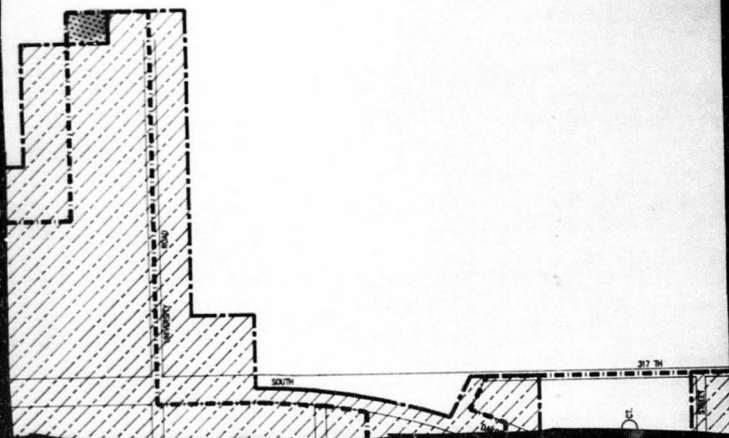
APPLICATION EXHIBIT A



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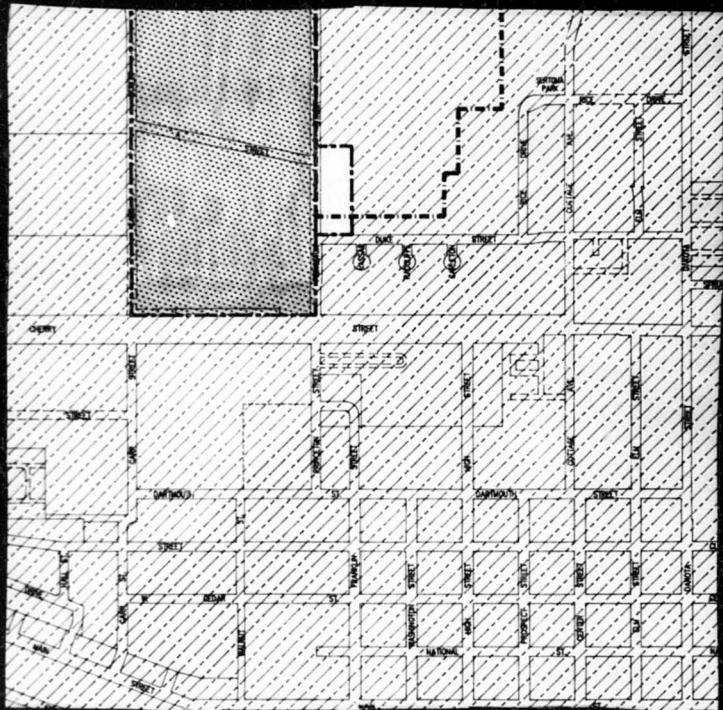


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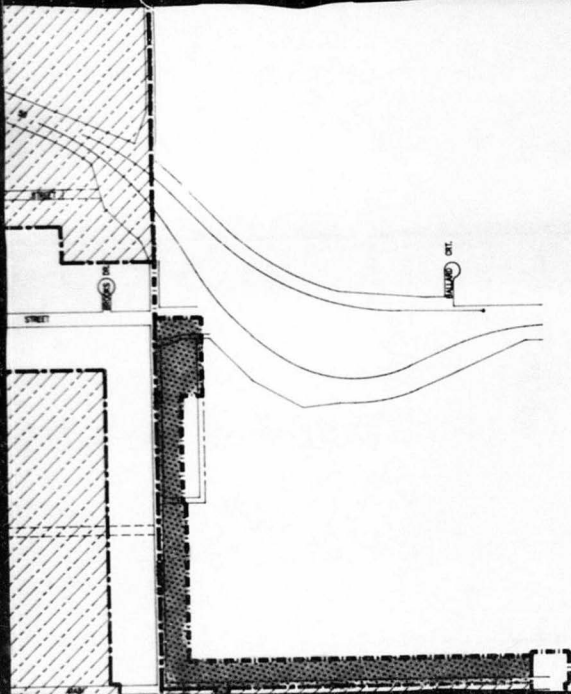
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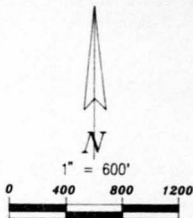




This is a detailed street map of the University of South Dakota campus. The map shows a grid of streets including Taylor St, Cherry St, University St, and various campus streets like Prentiss and Park. It also labels areas like 'UNIVERSITY OF SOUTH DAKOTA CAMPUS' and 'DANFORTH'. The map is oriented with North at the top.

8-14-1948





MAP OF
VERMILLION, SOUTH DAKOTA

CITY ELECTRIC SERVICE AREA

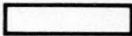


PURCHASE AREA

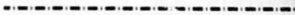


DATE: OCTOBER

CLAY-UNION SERVICE AREA



CITY LIMITS BOUNDARY



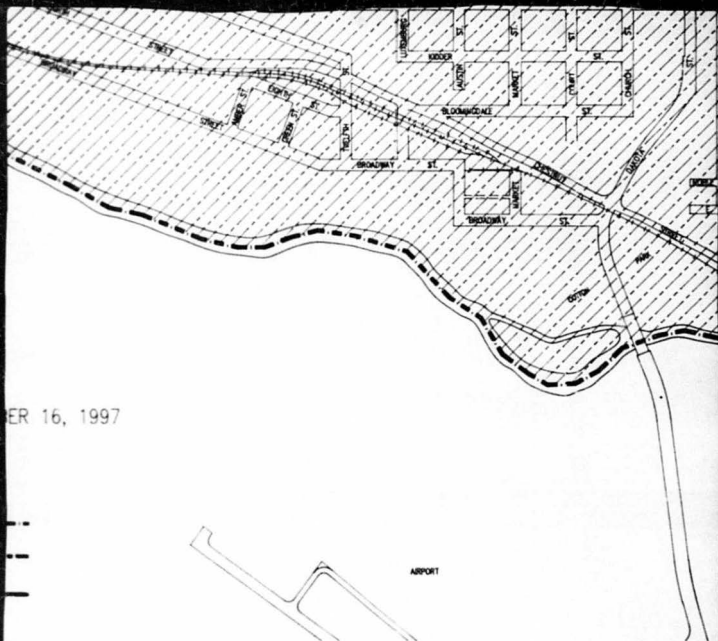
ELECTRIC SERVICE AREA BOUNDARY



CITY LIMITS/SERVICE BOUNDARY

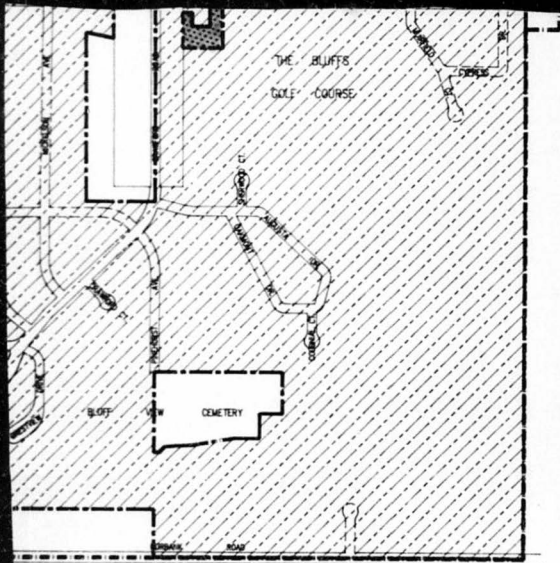


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ER 16, 1997

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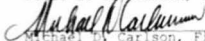


8141-26-19

CERTIFICATE OF COPY

I, Michael D. Carlson, do hereby certify that I am the duly appointed, qualified and acting City Finance Officer of the City of Vermillion, Clay County, South Dakota; that as such officer I am custodian of the Ordinances, Resolutions and Minutes of the City of Vermillion; that the foregoing is a true and correct copy from the original City Council minutes of the 21st day of October, 1996, Resolution Approving Electrical Service Territorial Acquisition, that I have carefully compared said copy with the original and depose and state that the same is a true, correct and authentic copy thereof.

Dated at Vermillion, South Dakota this 1st day of October, 1997.



Michael D. Carlson, Finance Officer

E. Resolution Approving Electrical Service Territorial Acquisition

John Gors, representing Clay Union Electric, presented and read a statement of position on the loss of electric service rights. On behalf of the Clay Union Electric Board of Directors, General Manager Paul Roberts and Chairman of the Board Dan O'Connor were present to answer questions regarding the statement of position. Discussion followed on the service area. Harold Holoch, Assistant Engineer, reviewed the parcels of property that have been annexed by the city during the last year which the resolution will start the process of the city acquiring the service rights.

514-96

After reading the same once, Alderman Kozak moved adoption of the Resolution authorizing the following:

NOTICE OF INTENT TO PURCHASE ELECTRIC UTILITY PROPERTIES IN ANNEXED AREAS

TO CLAY-UNION ELECTRIC COOP, A COOPERATIVE ASSOCIATION, VERMILLION, SOUTH DAKOTA:

Pursuant to SDCL 49-34A-49, the City of Vermillion, a municipal corporation, which operates an electrical utility, (the City) hereby notifies Clay-Union Electric Coop, an electric cooperative association, that the City intends to exercise its statutorily conferred rights to serve electrical energy to customers in those three areas, which are hereinafter more particularly described and which were annexed to the City on the dates hereinafter mentioned, viz:

The East Half (E 1/2) of the Southeast Quarter (SE 1/4) of

APPLICATION

EXHIBIT

B

0141260528

Section Twelve (12), Township Ninety-two (92), Range Fifty-two (52) West of the 5TH P.M., except the West 732 feet of the North 1,475 feet thereof, Clay County, South Dakota.

Annexed November 20, 1995.

Beginning at the Southwest section corner of Sec. 17-92-51 thence North 2652 feet on the center line of Crawford Road to the West 1/4 corner of Sec. 17-92-51 thence East 331 feet, thence South 548.86 feet, thence West 153 feet, thence South 777.57 feet, thence East 21.83 feet, thence South 1126.43 feet, thence East 2452 feet, thence South 200 feet to the South 1/4 corner of Sec. 17-92-51 thence West 2169 feet on the center line of Main Street thence South 339 feet, thence West 285 feet, thence North 256 feet, thence East 68 feet, thence South 100 feet, thence East 126 feet, thence North 183 feet to center line of Main Street thence West 392 feet to point of beginning, all in Section 17-92-51 and 20-92-51, Clay County, South Dakota.

Annexed on March 11, 1996.

The West 1/2 of the NW 1/4 of Section 13, Township 92 North, Range 52 West of the 5TH P.M., Clay County, South Dakota, with the following exceptions: The South 660' of the SW 1/4 of the NW 1/4; and Lot H-1 of the West 1/2 of the NW 1/4; and the East 1/2 of the NE 1/4 of Section 14, Township 92 North, Range 52 West of the 5TH P.M., Clay County, South Dakota, with the following exceptions: The South 660' of the SE 1/4 of the NE 1/4; Lot H-2 of the East 1/2 of the NE 1/4.

Annexed on April 12, 1996.

Said service areas are also described graphically on maps of the City of Vermillion, copies of which are annexed hereto and served herewith.

The City further notifies Clay-Union Electric that the City is aware of Clay-Union Electric Distribution properties being located within the herein above described property. The City offers to purchase the electric distribution properties of Clay-Union Electric serving existing customers located within the annexed areas together with all of the utility's rights to serve within said areas for a cash consideration which shall consist of the present-day reproduction cost, new, of the facilities being acquired, less depreciation computed on a straight-line basis; plus an amount equal to the cost on a nonbetterment basis of constructing any necessary facilities to reintegrate the system of Clay-Union Electric outside the annexed area after detaching the portion to be sold. The City offers to pay as compensation for service rights an annual amount, payable each year for a period of seven (7) years, equal to the sum of Twenty-Five (25%) percent of the gross revenues received from power sales to consumers of electric power within each of the annexed areas during said seven (7) year period. Gross revenues received shall

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be determined by applying the rate in effect by Clay-Union Electric Coop at the time of the purchases.

In the event the City and Clay-Union Electric Cooperative Association are unable to agree as to the amount to be paid, the City will apply to the Public Utilities Commission of the State of South Dakota, requesting the Commission, after notice and hearing, to determine the amount of the payment in accordance with SDCL 49-34A-50.

The motion was seconded by Alderman Yelverton. Alderman Burbach requested to abstain as he is employed by Clay Union Electric. Discussion followed and the question of the adoption of the Resolution was presented for a vote of the Governing Body. 7 members voted in favor of and 0 members voted in opposition to the Resolution. Mayor Radigan declared that the Resolution was adopted.

October 30, 1996

Mr. Paul Roberts, Manager
Clay Union Electric Corporation
P. O. Box 317
Vermillion, SD 57069

Dear Paul,

In accordance with action taken by the Vermillion City Council on October 7, 1996, I am conveying to Clay Union Electric Corporation this Notice of Intent to Purchase Electric Utility Properties in Annexed Areas. Attached is the required map which outlines the areas which the City intends to serve in conjunction with its recent annexations.

The City is aware of the existence of Clay Union facilities serving residences at 515 S. Crawford, 501 S. Crawford, and a house under construction at 427 S. Crawford. Additionally, the KELO tower at 1930 N. University is included within the area defined in the Notice.

I respectfully request acknowledgement of the offer to purchase which is contained within the Notice. We would like to set up a meeting in the near future to begin discussions related to terms of facilities purchase as well as reintegration timetables for construction and system cutover.

Sincerely,

Jeffrey A. Pederson
City Manager

enclosures

is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return the card to you.
- Attach this form to the front of the package, or on the back if space does not permit.
- Print "Return Receipt Requester" on the envelope below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery
Consult postmaster for fee.

3. Article Addressed to:
Mr. Paul Roberts Mgr
City Union Glue Corp
PO Box 317
Vermillion SD 57069

4a. Article Number
P361 752 794

4b. Service Type

☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery
10-31

5. Received By: (Print Name)
X Richard Burkhardt

6. Signature: (Addressee or Agent)
X Richard Burkhardt

8. Addressee's Address (Only if requested and fee is paid)

PS Form 3811, December 1994

Domestic Return Receipt

Thank you for using Return Receipt Service

P 361 752 794

US Postal Service

Receipt for Certified Mail

No Insurance Coverage Provided

Do not use for International Mail (See reverse)

Sent to:
Mr. Paul Roberts Mgr
City Union Glue Corp
PO Box 317
Vermillion SD 57069

Postage \$ 1.75

Certified Fee 1.00

Special Delivery Fee

Restricted Delivery Fee

Return Receipt (Showing to Whom & Date Delivered)

Return Receipt (Showing to Whom & Date Delivered)

Postage & Fees on \$ 1.98

TOTAL \$ 2.73

Postmark

PS Form 3800 April 1995

NOV 1 1995

(City)

NOTICE OF INTENT TO PURCHASE
ELECTRIC UTILITY PROPERTIES
IN ANNEXED AREAS

TO CLAY-UNION ELECTRIC COOP, A COOPERATIVE ASSOCIATION, VERMILLION,
SOUTH DAKOTA:

Pursuant to SDCL 49-34A-49, the City of Vermillion, a municipal corporation, which operates an electrical utility, (the City) hereby notifies Clay-Union Electric Coop, an electric cooperative association, that the City intends to exercise its statutorily conferred rights to serve electrical energy to customers in those three areas, which are hereinafter more particularly described and which were annexed to the City on the dates hereinafter mentioned, viz:

The East Half (E 1/2) of the Southeast Quarter (SE 1/4) of Section Twelve (12), Township Ninety-two (92), Range Fifty-two (52) West of the 5TH P.M., except the West 732 feet of the North 1,475 feet thereof, Clay County, South Dakota.

Annexed November 20, 1995.

Beginning at the Southwest section corner of Sec. 17-92-51 thence North 2652 feet on the center line of Crawford Road to the West 1/4 corner of Sec. 17-92-51 thence East 331 feet, thence South 548.86 feet, thence West 153 feet, thence South 777.57 feet, thence East 21.83 feet, thence South 1126.43 feet, thence East 2452 feet, thence South 200 feet to the South 1/4 corner of Sec. 17-92-51 thence West 2169 feet on the center line of Main Street thence South 339 feet, thence West 285 feet, thence North 256 feet, thence East 68 feet, thence South 100 feet, thence East 126 feet, thence North 183 feet to center line of Main Street thence West 392 feet to point of beginning, all in Section 17-92-51 and 20-92-51, Clay County, South Dakota.

Annexed on March 11, 1996.

The West 1/2 of the NW 1/4 of Section 13, Township 92 North, Range 52 West of the 5TH P.M., Clay County, South Dakota, with the following exceptions: The South 660' of the SW 1/4 of the NW 1/4; and Lot H-1 of the West 1/2 of

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JAN 20 1996

the NW 1/4; and the East 1/2 of the NE 1/4 of Section 14, Township 92 North, Range 52 West of the 5TH P.M., Clay County, South Dakota, with the following exceptions: The South 660' of the SE 1/4 of the NE 1/4; Lot H-2 of the East 1/2 of the NE 1/4.

Annexed on April 12, 1996.

Said service areas are also described graphically on maps of the City of Vermillion, copies of which are annexed hereto and served herewith.

The City further notifies Clay-Union Electric that the City is aware of Clay-Union Electric Distribution properties being located within the herein above described property. The City offers to purchase the electric distribution properties of Clay-Union Electric serving existing customers located within the annexed areas together with all of the utility's rights to serve within said areas for a cash consideration which shall consist of the present-day reproduction cost, new, of the facilities being acquired, less depreciation computed on a straight-line basis; plus an amount equal to the cost on a nonbetterment basis of constructing any necessary facilities to reintegrate the system of Clay-Union Electric outside the annexed area after detaching the portion to be sold. The City offers to pay as compensation for service rights an annual amount, payable each year for a period of seven (7) years, equal to the sum of Twenty-Five (25%) percent of the gross revenues received from power sales to consumers of electric power within each of the annexed areas during said seven (7) year period. Gross revenues received shall be determined by applying the rate in effect by Clay-Union Electric Coop at the time of the purchases.

In the event the City and Clay-Union Electric Cooperative Association are unable to agree as to the amount to be paid, the City will apply to the Public Utilities Commission of the State of South Dakota, requesting the Commission, after notice and hearing, to determine the amount of the payment in accordance with SDCL 49-34A-50.

Dated at Vermillion, South Dakota this 21 day of October, 1996.

THE CITY OF VERMILLION,
a municipal corporation

By William J. Radigan
William J. Radigan, Mayor

ATTEST:

By Michael D. Carlson
Michael D. Carlson
Finance Officer

81412627

ELECTRIC SERVICE AREA
10-21-95
CU - Claydon Electric Coop
V - City of Vermillion

ANNEXATION MAP VERMILLION, SD November 20, 1995

City of Vermillion
25 Center Street
Vermillion, SD 57059
605-624-5641

Prepared by:



1" = 50'

1/4 Line

1/4 Line

1475'

UNIVERSITY RD.

Sec. Line

ANNEXATION
E 1/2, SE 1/4, Sec. 12-92-52
ENC. N 1/2 of N 1475'

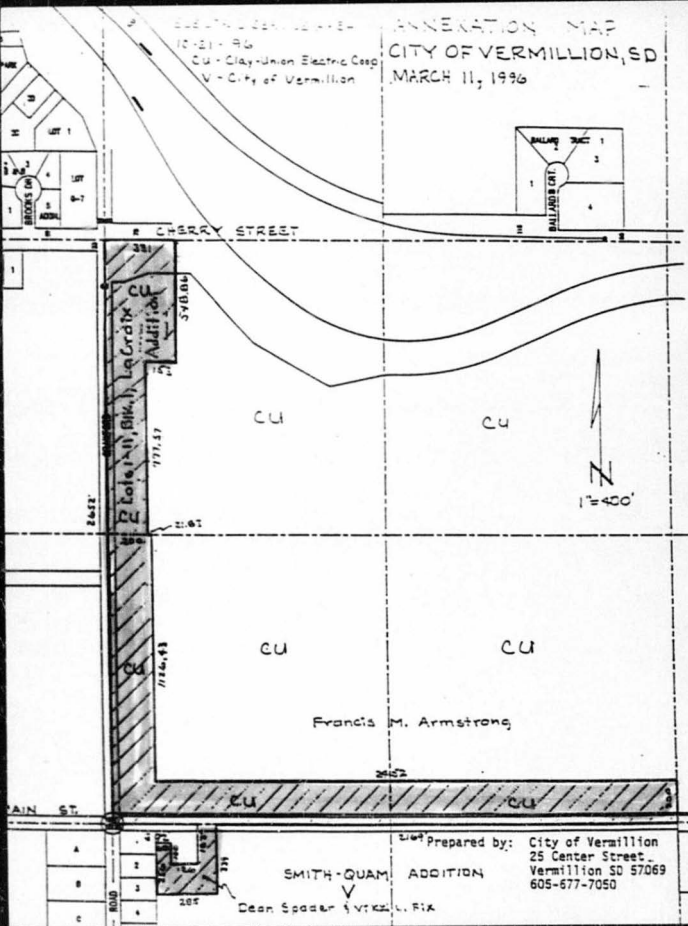
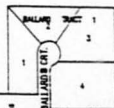
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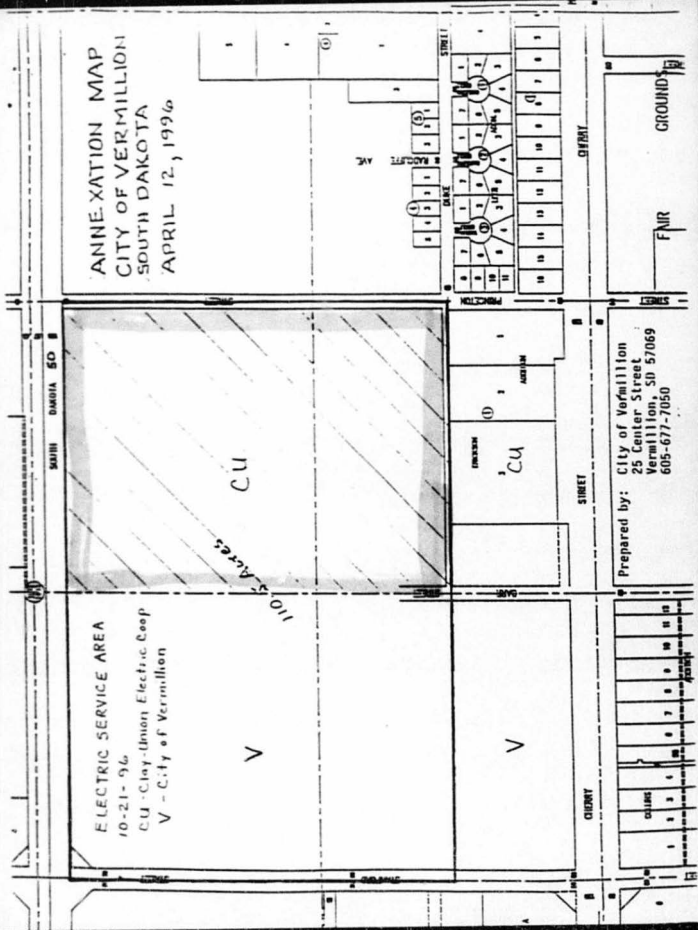
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1475'

10-21-96
Cu - Clay-Union Electric Coop
V - City of Vermillion

ANNEXATION MAP
CITY OF VERMILLION, SD
MARCH 11, 1996





Clay-Union Electric Corporation

P.O. Box 317

Vermillion, South Dakota 57069

Phone (605) 624-2673

Fax (605) 624-5526

May 29, 1997

Jeff Pederson, City Manager
245 Center Street
City of Vermillion 57069

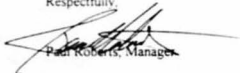
Vermillion, South Dakota 57069

Dear Jeff

This letter is in response to your letter of October 30, 1996, and the May 2, 1997 letter of John Billing, Deputy City Attorney, regarding the Notice of Intent to Purchase Electric Utility Properties

At its May 1997 board meeting, the Board of Directors of Clay Union Electric voted not to consent to the conditions set forth in the October 30, 1996 Notice of Intent

Respectfully,



Paul Roberts, Manager



APPLICATION

EXHIBIT D



We put value on the line. _____

11
V
City of
VERMILLION

25 CENTER STREET
VERMILLION, SOUTH DAKOTA 57069

PHONE: (605) 624-5641

RECEIVED

OCT 24 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION



October 22, 1997

Public Utilities Commission
State Capitol Building
500 East Capitol Avenue
Pierre, SD 57501-5070

RE: City of Vermillion vs. Clay-Union Electric Corporation

Gentlemen:

Enclosed herein is the original Sheriff's Return for
service of our application upon Clay-Union Electric.

Yours truly,
CITY OF VERMILLION

Martin Weeks
City Attorney

MW/sd

Encl.

SHERIFF'S RETURN
And Day Book Entry
STATE OF SOUTH DAKOTA, COUNTY OF CLAY, SS.

EL 97-020

No. 9700637

I, **RAYMOND D. PASSICK**, Sheriff of Clay County, S.D., hereby certify and return that the annexed papers listed below came into my hands for service on 10/17/97, and that on 10/20/97, I duly served the same upon the within named **LBO POWELL** by delivering to and leaving with said **LBO POWELL** personally, true and correct copies of said civil process at

in said County of Clay, State of South Dakota, and I hereby certify that I know the person so served to be the same named in the within civil process.

RECEIVED

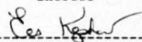
OCT 24 1997

SHERIFF'S FEES	ENTRY	SOUTH DAKOTA-PUBLIC UTILITIES COMMISSION
1. APPLICATION FOR DETERMINATION \$ 16.50	THE CITY OF VERMILLION A MUNICIPAL CORPORATION	PLAINTIFF
2. OF PURCHASE PRICE OF ELECTRIC	- VS -	
3. FACILITIES IN ANNEXED AREAS	CLAY-UNION ELECTRIC CORP. INCORPORATED, A CORPORATION	DEPENDANT 2ND DEPENDANT
4. APPLICATION EXHIBITS "A,B,C AD"		
5.	RECEIVED FROM: MARTIN WERKS	
6.	ADDRESS: PO BOX 435,VERMILLION,SD 57069	
7.	RECEIVED: 10/17/97 SERVED: 10/20/97 RETURNED: 10/20/97	
8.	IN WHAT COURT:	TIME SERVED: 1528 hrs
MILES DRIVEN 3.7037	BY WHOM SERVED: 191B	
MILEAGE \$ 1.00	UPON WHOM SERVED: LBO POWELL	
STORAGE FEES		
COMMISSION FEES		
TOTAL FEES \$ 17.50		

Dated at Vermillion, South Dakota 10/20/97

Raymond D. Passick

Sheriff

By: 

Leslie K. Kephart
Deputy Sheriff

Status ----- UNPAID Date paid:

AMOUNT DUE: \$ 17.50
Amount Paid:
Pre-Payment:
Over payment:

Check#:
Check#:
Check#:

CLAY COUNTY SHERIFF
15 WASHINGTON ST.
VERMILLION, SD 57069-2031

BALANCE DUE: \$ 17.50 <--- PLEASE PAY THIS AMOUNT.

66-000-1-4-10

EL 97-020

RECEIVED

NOV 17 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BOGUE, WEEKS, BILLINGS & COLLIER

LAWYERS

P.O. BOX 435

N.E. MAIN

VERMILLION, SOUTH DAKOTA

57069-0435

EVERETT A. BOGUE (1901-1988)

MARTIN WEEKS

JOHN P. BILLINGS

CATHY F. COLLIER

TELEPHONE 624-2619

AREA CODE 605

November 14, 1997

Public Utilities Commission
State Capitol Building
500 East Capitol Avenue
Pierre, SD 57501-5070

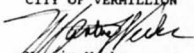
RE: City of Vermillion vs. Clay-Union Electric Corporation

Gentlemen:

Enclosed herein is the original Interrogatories and
Requests for Production of Documents for the above matter.
Would you kindly file these of record.

Thank you.

Yours truly,
CITY OF VERMILLION



Martin Weeks
City Attorney

MW/sd

Encl.

EL 97-020

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE
STATE OF SOUTH DAKOTA

RECEIVED

NOV 17 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

THE CITY OF VERMILLION,	)	
a municipal corporation,	)	
	)	
Applicant,	)	
vs.	)	APPLICANT CITY OF VERMILLION'S
	)	REQUEST FOR PRODUCTION OF
	)	DOCUMENTS TO RESPONDENT
CLAY-UNION ELECTRIC	)	
COOPERATIVE, a corporation,	)	
	)	
Respondent.	)	

TO: CLAY-UNION ELECTRIC COOPERATIVE, A CORPORATION

COMES NOW, the City of Vermillion, South Dakota, and, pursuant to SDCL 15-6-34, request Respondent to produce and permit counsel for Applicant to inspect and copy each of the following documents:

1. Identify and produce copies of all contracts, price lists, price quotes, invoices or other like documents in your possession or subject to your control corroborating your answers to the accompanying Interrogatories No. 2, 18, and 32, respectively.
2. Identify and produce a copy of those of your book entries which show or from which you made the calculations establishing the values set forth in your answers to the accompanying Interrogatories No. 3, 19 and 33, respectively.
3. Identify and produce a copy of those of your book entries which show all the values set forth in your answers to the accompanying Interrogatories No. 4, 20 and 34, respectively.
4. Identify and produce copies of all contracts, price lists, price quotes, invoices or other like documents in your possession or subject to your control corroborating your answers to the accompanying Interrogatories No. 6, 13, and 37, respectively.
5. Identify and produce copies of all contracts, price lists, price quotes, invoices or other like documents in your possession or subject to your control corroborating your answers to the accompanying Interrogatories No. 9, 23, and 38, respectively.
6. Identify and produce your employee classification list.

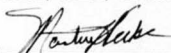
7. Identify and produce your wage scale list showing the hourly, weekly, or monthly, as the case may be, wage for each class of employee mentioned in your employee classification list produced in response to the preceding request No. 6.

8. Identify and produce your records disclosing the number of kilowatt hours consumed by each of your consumers or patrons located in each of the annexed areas described in the accompanying Interrogatories No. 1, 17, and 31 during each of the ten years next preceding the date hereof.

Applicant requests that the aforesaid documents be made available for inspection and copying at the office of the City Manager at such reasonable times as may be agreed upon or, in the alternative, that a legible photocopy be furnished to counsel.

Dated at Vermillion, South Dakota, this 14th day of November, 1997.

BOGUE, WEEKS, BILLINGS & COLLIER

BY: 

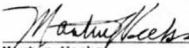
Martin Weeks, City Attorney
City of Vermillion
P.O. Box 435
Vermillion, SD 57069-0435
(605) 624-2619

CERTIFICATE OF SERVICE

Service of the above and foregoing Applicant City of Vermillion's Request for Production of Documents to Respondent was served upon the Respondent at the following address:

Clay-Union Electric Cooperative
ATTN: Mr. Paul Roberts
1410 East Cherry Street
Vermillion, SD 57069

on the 14th day of November, 1997, by mailing a true and correct copy thereof by United States Mail, with first class postage prepaid thereon at Vermillion, South Dakota.


Martin Weeks

01411266
EL 97-020

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE
STATE OF SOUTH DAKOTA

RECEIVED

NOV 17 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

THE CITY OF VERMILLION,)
a municipal corporation,)

Applicant,)

vs.)

CLAY-UNION ELECTRIC)
COOPERATIVE, a corporation,)

Respondent.)

APPLICANT'S INTERROGATORIES
(FIRST SET)

TO: CLAY-UNION ELECTRIC COOPERATIVE, A CORPORATION

Applicant, City of Vermillion, hereby requests answers to the following Interrogatories, pursuant to SDCL 15-6-33. You are reminded that your answers must include all information available not only to you, but also to your agents, attorneys, insurers or officers who have information available to you upon your inquiry to them.

INTERROGATORY NO. 1: Please describe and identify each item of your electric distribution properties located within the following described real property annexed into the City of Vermillion, South Dakota on the 20th day of November, 1995, viz:

The East Half (E 1/2) of the Southeast Quarter (SE 1/4) of Section Twelve (12), Township Ninety-two (92), Range Fifty-two (52) West of the 5TH P.M., except the West 732 feet of the North 1,475 feet thereof, Clay County, South Dakota.

INTERROGATORY NO. 2: With respect to each item of property mentioned in your answer to Interrogatory No. 1, state the following:

- a. The name of the person from whom you purchased or otherwise acquired the item.
- b. The date of purchase or other acquisition.

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- c. The brand name, model and manufacturer of the item.
 - d. The unit price you paid for the item
 - e. The amount of depreciation you have taken on each such item.
 - f. The value at which you now carry the item on your corporate records.
 - g. Your statement describing the condition of the item.

INTERROGATORY NO. 3: Please state the present total book value of all the items described in your answer to Interrogatory No. 1.

INTERROGATORY NO. 4: Please state the total book value of all the electric distribution properties of Clay-Union Electric Coop, wherever located and whether installed or in storage.

INTERROGATORY NO. 5: Itemize and describe all items of the properties of Clay-Union Electric Coop other than electric distribution properties, the value of which was requested in Interrogatory No. 4, and state the book value of each item.

INTERROGATORY NO. 6: With respect to each item of property mentioned in your answer to Interrogatory No. 1, state the following:

- a. The present day reproduction cost new of the item computed as of each of the following dates:
 - (1) January 30, 1997; and
 - (2) The date of your answer.
- b. The depreciation computed on a straight-line basis according to ordinary accounting principles from each of the dates mentioned in Interrogatory No. 6a above.

INTERROGATORY NO. 7: Please state the total present day reproduction cost new value of all items mentioned in your answer to Interrogatory No. 6 resulting after deducting depreciation computed on a straight-line basis.

INTERROGATORY NO. 8: Please itemize, describe and identify each item of materials and goods necessary in the construction, on a nonbetterment basis, of facilities

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necessary to reintegrate Clay-Union's system outside the annexed area described in Interrogatory No. 1 after detaching the portion acquired by the City.

INTERROGATORY NO. 9: With respect to each item of property mentioned in your answer to Interrogatory No. 8, please state:

- a. The brand name, model and manufacturer of the item.
- b. The unit list price for each such item.
- c. The name and addresses of the supplier or suppliers of each category of goods and materials necessary for the reintegration process mentioned in Interrogatory No. 8.

INTERROGATORY NO. 10: a. Please identify the class or type of each of your employees necessary to install the facilities mentioned in Interrogatory No. 8 and for each such employee state:

- 1) His or her hourly wage.
- 2) The number of man hours of labor you reasonably anticipate will be necessary for each class of employee mentioned in your answer to the next preceding subparagraph in reintegrating your system outside the annexed area after detaching the portion acquired by the City.

INTERROGATORY NO. 11: Please identify and quantify any costs and expenses other than those mentioned in answer to Interrogatories No. 8 to 10, inclusive, which you reasonably deem to be necessary and incidental to the removal of your existing utility properties from the annexed area and the reintegration of your system outside the annexed area.

INTERROGATORY NO. 12: Please describe the route and location of any utility properties you would necessarily install in reintegrating your system outside the annexed area.

INTERROGATORY NO. 13: State the number of consumers or patrons served by Clay-Union Electric Cooperative in the area described in Interrogatory No. 1 and identify each by name and address and state the date when service was commenced to each such consumer.

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INTERROGATORY NO. 16: If there has been any change or changes in your rates since the 20th day of November, 1995, please state when each change occurred and state the rates that prevailed during each period of time between changes.

Beginning at the Southwest section corner of Sec. 17-92-51 thence North 2652 feet on the center line of Crawford Road to the West 1/4 corner of Sec. 17-92-51 thence East 331 feet, thence South 548.86 feet, thence West 153 feet, thence South 777.57 feet, thence East 21.83 feet, thence South 1126.43 feet, thence East 2452 feet, thence South 200 feet to the South 1/4 corner of Sec. 17-92-51 thence West 2169 feet on the center line of Main Street thence South 150 feet thence East 85 feet, thence North 256 feet thence East 66 feet thence South 100 feet, thence East 126 feet, thence North 183 feet to center line of Main Street thence West 392 feet to point of beginning, all in Section 17-92-51 and 20-92-51, Clay County, South Dakota.

- The name of the person from whom you purchased or otherwise acquired the item.
- The date of purchase or other acquisition.
- The brand name, model and manufacturer of the item.
- The unit price you paid for the item
- The amount of depreciation you have taken on each such item.

- f. The value at which you now carry the item on your corporate records.
- g. Your statement describing the condition of the item.

INTERROGATORY NO. 19: Please state the present total book value of all the items described in your answer to Interrogatory No. 17.

INTERROGATORY NO. 20: With respect to each item of property mentioned in your answer to Interrogatory No. 17, state the following:

- a. The present day reproduction cost new of the item computed as of each of the following dates:
 - (1) January 30, 1997; and
 - (2) The date of your answer.
- b. The depreciation computed on a straight-line basis according to ordinary accounting principles from each of the dates mentioned in Interrogatory No. 22a above.

INTERROGATORY NO. 21: Please state the total present day reproduction cost new value of all items mentioned in your answer to Interrogatory No. 20 resulting after deducting depreciation computed on a straight-line basis.

INTERROGATORY NO. 22: Please itemize, describe and identify each item of materials and goods necessary in the construction, on a nonbetterment basis, of facilities necessary to reintegrate Clay-Union's system outside the annexed area described in Interrogatory No. 17 after detaching the portion acquired by the City.

INTERROGATORY NO. 23: With respect to each item of property mentioned in your answer to Interrogatory No. 22, please state:

- a. The brand name, model and manufacturer of the item.
- b. The unit list price for each such item.
- c. The name and addresses of the supplier or suppliers of each category of goods and materials necessary for the reintegration process mentioned in Interrogatory No. 22.

01412641
INTERROGATORY NO. 24: a. Please identify the class or type of each of your employees necessary to install the facilities mentioned in Interrogatory No. 22 and for each such employee state:

- 1) His or her hourly wage.
- 2) The number of man hours of labor you reasonably anticipate will be necessary for each class of employee mentioned in your answer to the next preceding subparagraph in reintegrating your system outside the annexed area after detaching the portion acquired by the City.

INTERROGATORY NO. 25: Please identify and quantify any costs and expenses other than those mentioned in answer to Interrogatories No. 22 to 24, inclusive, which you reasonably deem to be necessary and incidental to the removal of your existing utility properties from the annexed area and the reintegration of your system outside the annexed area.

INTERROGATORY NO. 26: Please describe the route and location of any utility properties you would necessarily install in reintegrating your system outside the annexed area.

INTERROGATORY NO. 27: State the number of consumers or patrons served by Clay-Union Electric Cooperative in the area described in Interrogatory No. 17 and identify each by name and address and state the date when service was commenced to each such consumer.

INTERROGATORY NO. 28: Applying your current rates, state the amount of the gross revenues from power sales paid each year by each patron or consumer named in answer to Interrogatory No. 27 during the ten years next preceding the date hereof.

INTERROGATORY NO. 29: Please state your current rates of charges for electric service furnished to your consumers in the annexed area.

INTERROGATORY NO. 30: If there has been any change or changes in your rates since the 11th day of March, 1996, please state when each change occurred and state the rates that prevailed during each period of time between changes.

INTERROGATORY NO. 31: Please describe and identify each item of your electric distribution properties located within the following described real property annexed into the City of Vermillion, South Dakota on the 12th day of April, 1996, viz:

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The West 1/2 of the NW 1/4 of Section 13, Township 92 North, Range 52 West of the 5TH P.M., Clay County, South Dakota, with the following exceptions: The South 660' of the SW 1/4 of the NW 1/4; and Lot H-1 of the West 1/2 of the NW 1/4; and the East 1/2 of the NE 1/4 of Section 14, Township 92 North, Range 52 West of the 5TH P.M., Clay County, South Dakota, with the following exceptions: The South 660' of the SE 1/4 of the NE 1/4; Lot H-2 of the East 1/2 of the NE 1/4.

INTERROGATORY NO. 32: With respect to each item of property mentioned in your answer to Interrogatory No. 31, state the following:

- a. The name of the person from whom you purchased or otherwise acquired the item.
- b. The date of purchase or other acquisition.
- c. The brand name, model and manufacturer of the item.
- d. The unit price you paid for the item
- e. The amount of depreciation you have taken on each such item.
- f. The value at which you now carry the item on your corporate records.
- g. Your statement describing the condition of the item.

INTERROGATORY NO. 33: Please state the present total book value of all the items described in your answer to Interrogatory No. 31.

INTERROGATORY NO. 34: With respect to each item of property mentioned in your answer to Interrogatory No. 31, state the following:

- a. The present day reproduction cost new of the item computed as of each of the following dates:
 - (1) January 30, 1997; and
 - (2) The date of your answer.

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- b. The depreciation computed on a straight-line basis according to ordinary accounting principles from each of the dates mentioned in Interrogatory No. 34a above.

INTERROGATORY NO. 35: Please state the total present day reproduction cost new value of all items mentioned in your answer to Interrogatory No. 34 resulting after deducting depreciation computed on a straight-line basis.

INTERROGATORY NO. 36: Please itemize, describe and identify each item of materials and goods necessary in the construction, on a nonbetterment basis, of facilities necessary to reintegrate Clay-Union's system outside the annexed area described in Interrogatory No. 31 after detaching the portion acquired by the City.

INTERROGATORY NO. 37: With respect to each item of property mentioned in your answer to Interrogatory No. 36, please state:

- a. The brand name, model and manufacturer of the item.
- b. The unit list price for each such item.
- c. The name and addresses of the supplier or suppliers of each category of goods and materials necessary for the reintegration process mentioned in Interrogatory No. 36.

INTERROGATORY NO. 38: a. Please identify the class or type of each of your employees necessary to install the facilities mentioned in Interrogatory No. 36 and for each such employee state:

- 1) His or her hourly wage.
- 2) The number of man hours of labor you reasonably anticipate will be necessary for each class of employee mentioned in your answer to the next preceding subparagraph in reintegrating your system outside the annexed area after detaching the portion acquired by the City.

INTERROGATORY NO. 39: Please identify and quantify any costs and expenses other than those mentioned in answer to Interrogatories No. 36 to 38, inclusive, which you reasonably deem to be necessary and incidental to the removal of your existing utility properties from the annexed area and the reintegration of your system outside the annexed area.

INTERROGATORY NO. 40: Please describe the route and location of any utility properties you would necessarily install in reintegrating your system outside the annexed area.

INTERROGATORY NO. 41: State the number of consumers or patrons served by Clay-Union Electric Cooperative in the area described in Interrogatory No. 31 and identify each by name and address and state the date when service was commenced to each such consumer.

INTERROGATORY NO. 42: Applying your current rates, state the amount of the gross revenues from power sales paid each year by each patron or consumer named in answer to Interrogatory No. 41 during the ten years next preceding the date hereof.

INTERROGATORY NO. 43: Please state your current rates of charges for electric service furnished to your consumers in the annexed area.

INTERROGATORY NO. 44: If there has been any change or changes in your rates since the 12th day of April, 1996, please state when each change occurred and state the rates that prevailed during each period of time between changes.

INTERROGATORY NO. 45: Please state what, in your opinion, is the full fair market value of Clay-Union as a going concern.

INTERROGATORY NO. 46: Are the assets of Clay-Union subject to any liens or pledged as security for any indebtedness of the Cooperative?

INTERROGATORY NO. 47: If the answer to Interrogatory No. 46 is "yes", please a) identify each lienholder or secured creditor, b) the original amount of the obligation secured by the lien, c) the date the obligation arose, d) the current unpaid balance of the obligation, e) the interest rate it bears, f) the purpose for which the obligation was incurred, and e) whether Clay-Union is in default of any of the terms of the obligation.

INTERROGATORY NO. 48: Identify by date, names of the correspondents named therein and the subject matter thereof, any item of correspondence between Clay-Union Electric Cooperative and any lender or other agency holding an obligation mentioned in your answer to Interrogatory No. 19 wherein any mention was made of the City's acquisition of any of the electric distribution properties and/or service rights which are the subject of this proceeding.

INTERROGATORY NO. 49: Identify by date, names of the correspondent's named therein and the subject matter thereof, any item of correspondence between Clay-Union Electric Cooperative and any governmental agency wherein any mention was made of the City, acquisition of the electric distribution properties and/or the service rights which are the subject of this proceeding.

INTERROGATORY NO. 50: At any time during the last 10 years has Clay-Union furnished any financial incentives through loans, grants, gifts, rate incentives or gratuitous electric service facility installations in any of the three annexed areas which are the subject matter of this proceeding for the purpose of encouraging economic development or economic expansion?

INTERROGATORY NO. 51: If your answer to Interrogatory Number 50 is "yes", please describe and identify each instance where it was done and describe the nature of the act or thing done and quantify the value of your contribution in dollars.

INTERROGATORY NO. 52: At any time during the last 10 years has Clay-Union constructed or installed or caused to be constructed or installed at its expense any streets, sidewalks highways, storm water sewer facilities to serve any of the three annexed areas which are the subject matter of this proceeding?

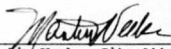
INTERROGATORY NO. 53: If your answer to Interrogatory No. 52 is "yes", please describe and identify each instance where such installation work or construction work was done and set forth the cost thereof.

INTERROGATORY NO. 54: Identify each person who furnished information or who assisted you in compiling the answers to these Interrogatories, identifying specifically each interrogatory or subpart thereof with which each person assisted.

Dated this 14th day of November, 1997.

BOGUE, WEEKS, BILLINGS & COLLIER

BY:

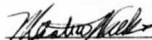

 Martin Weeks, City Attorney
 City of Vermillion
 P.O. Box 435
 Vermillion, SD 57069-0435
 (605) 624-2619

CERTIFICATE OF SERVICE

Service of the above and foregoing Applicant's Interrogatories (First Set) was served upon the Respondent at the following address:

Clay-Union Electric Cooperative
ATTN: Mr. Paul Roberts
1410 East Cherry Street
Vermillion, SD 57069

on the 14th day of November, 1997, by mailing a true and correct copy thereof by United States Mail, with first class postage prepaid thereon at Vermillion, South Dakota.


Martin Weeks

EL 97-020
RECEIVED

JAN 25 1938

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

TELEPHONE 924-2419
AREA CODE 605

BOGUE, WEEKS, BILLINGS & COLLIER
LAWYERS
P.O. BOX 435
S.E. MAIN
VERMILION, SOUTH DAKOTA
57069-0435

EVERETT A. BOGUE (1901-1988)
MARTIN WEEKS
JOHN F. BILLINGS
CATHY F. COLLIER

2 Jan 98

Public Utilities Commission
State Capital Building
Pierre, South Dakota 57501
Re: City of Vermillion v. Clay Union Electric
Attention: William Bullard

Dear Mr. Bullard

Enclosed please find the Responses received
from Clay Union Electric which we discussed
in our telephone conversation on Friday PM.

For your information I enclose also
a copy of the affidavits I will file along
with the City motion for an Order to show
cause and the Order to show cause.

Thank you for your attention to this request.

Yours Truly

Martin Weeks
City Atty

RECEIVED

JAN 05 1988

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSIONBEFORE THE PUBLIC UTILITIES COMMISSION
OF THE
STATE OF SOUTH DAKOTA

COPY

THE CITY OF VERMILLION,	)	
A Municipal Corporation,	)	RESPONDENT'S RESPONSE TO
Applicant,	)	APPLICANT'S INTERROGATORIES
vs.	)	(FIRST SET) AND RESPONDENT'S
	)	RESPONSE TO APPLICANT, CITY
CLAY-UNION ELECTRIC COOPERATIVE,	)	VERMILLION'S REQUEST FOR
a Corporation, Respondent.	)	PRODUCTION OF DOCUMENTS
	)	TO RESPONDENT

TO: THE CITY OF VERMILLION, A Municipal Corporation:

COMES NOW Clay-Union Electric Corporation, by and through John A. Gors, their attorney of record and Responds to Applicant's Interrogatories (First Set) and Applicant City of Vermillion's Request for Production of Documents to Respondent as follows:

I.

Respondent respectfully declines to answer Applicant's Interrogatories.

II.

Respondent respectfully declines to produce those documents requested by Applicant.

III.

Respondent does not believe these discovery requests to be pertinent or relevant at this time. The discovery requests are all directed to discovering information which would enable

01411-26-49

Applicant to determine the purchase price for electric facilities in an area annexed by a municipality under SDCL 49-34A-50.

IV.

The issue in this matter is not the purchase price of Respondent's facilities. Respondent declines to sell their facilities and service territory at any price.

V.

Respondent believes the South Dakota statutes which purport to compel Respondent to sell and transfer territory which is annexed by Applicant and the South Dakota statutes setting the sale price to be unconstitutional.

VI.

Respondent also believes that the South Dakota statutes on which Applicant relies are pre-empted by the Federal Supremacy Clause in that the successful annexation and transfer territory by Applicant would impair Respondents ability to repay their federal loans and frustrate the federal purpose of a federal statutory scheme to-wit: the Rural Electrification Act (REA) found at 7 USC 901.

VII.

At such time, and in the event the South Dakota statutes relating to annexation and valuation are held to be constitutional, Respondent will supply Applicant all relevant information.

VIII.

At such time, and in the event, it is determined that the South Dakota statutes do not frustrate the federal purpose of the Rural Electrification Act, thus answering the question of federal pre-emption, Respondent will supply Applicant all relevant information.

Dated this 15th day of December, 1997.



John A. Goss
Attorney for Respondent
10 Austin Street
P.O. Box 396
Vermillion, SD 57069-0396
Ph: 605-624-2231
Fax: 605-624-6628

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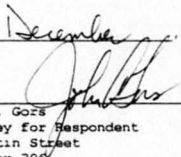
BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE
STATE OF SOUTH DAKOTA

THE CITY OF VERMILLION,) ss
A Municipal Corporation,)
Applicant,)
vs.) CERTIFICATE OF SERVICE
)
CLAY-UNION ELECTRIC COOPERATIVE,)
a Corporation, Respondent.)

I hereby certify that on the date signed below, a true and correct copy of Respondent's Response to Applicant's s Interrogatories (First Set) and Respondent's Response to Applicant City of Vermillion's Request for Production of Documents to Respondent was sent by first class mail, postage prepaid, duly addressed to:

Martin Weeks, Esq.
P.O. Box 435
Vermillion, SD 57069

Dated this 15th day of December, 1997.



John A. Goetz
Attorney for Respondent
10 Austin Street
P.O. Box 396
Vermillion, SD 57069-0396
Ph: 605-624-2231
Fax: 605-624-6628

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE
STATE OF SOUTH DAKOTA

RECEIVED

JAN 05 1998

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

THE CITY OF VERMILLION,)
a municipal corporation,)

Applicant,)

vs.)

CLAY-UNION ELECTRIC CORP.,)
INCORPORATED, a corporation,)

Respondent.)

AFFIDAVIT IN SUPPORT
OF
ORDER TO SHOW CAUSE

STATE OF SOUTH DAKOTA)
:
COUNTY OF CLAY)

William J. Radigan, being first duly sworn, on his oath
deposes and says:

I

Affiant is a resident of Vermillion, South Dakota, is
more than 21 years of age and is the duly elected, qualified
and acting Mayor of the City of Vermillion.

II

The City of Vermillion, Applicant herein, is a
municipal corporation duly organized under the laws of the
State of South Dakota, and its principal office is located
in the municipal offices building at 25 Center Street in
Vermillion, Clay County, South Dakota.

III

The population of the City of Vermillion exceeds 10,000
people, and the City is an urban area.

IV

The Applicant owns and operates an electric utility
serving customers in some areas outside of and adjacent to
the City of Vermillion.

V

Clay-Union Electric Cooperative, the Respondent herein,
is an electric utility company organized under the laws of
the State of South Dakota, with its principal office located

at 1410 East Cherry Street in Vermillion, South Dakota and serves consumers in an area including portions of Clay, Union, and Yankton Counties and including territory adjacent to and within the boundaries of the Applicant City.

VI

On the 20th day of November, 1995 the Applicant annexed a tract of real property legally described as follows:

The East Half (E 1/2) of the Southeast Quarter (SE 1/4) of Section Twelve (12), Township Ninety-two (92), Range Fifty-two (52) West of the 5TH P.M., except the West 732 feet of the North 1,475 feet thereof, Clay County, South Dakota.

Respondent currently has service rights in that portion of said annexed territory described as follows:

The North 220 feet of the West 298 feet of the East 588 feet of the East Half of the Southeast Quarter (E 1/2 SE 1/4) of Section 12, Township 92, Range 52, West of the 5th P.M.

and has installed electrical facilities to serve one consumer therein.

VII

On the 11th day of March, 1996 the Applicant annexed a tract of real property legally described as follows:

Beginning at the Southwest section corner of Sec. 17-92-51 thence North 2652 feet on the center line of Crawford Road to the West 1/4 corner of Sec. 17-92-51 thence East 331 feet, thence South 548.86 feet, thence West 153 feet, thence South 777.57 feet, thence East 21.83 feet, thence South 1126.43 feet, thence East 2452 feet, thence South 200 feet to the South 1/4 corner of Sec. 17-92-51 thence West 2169 feet on the center line of Main Street thence South 339 feet, thence West 285 feet, thence North 256 feet, thence East 68 feet, thence South 100 feet, thence East 126 feet, thence North 183 feet to center line of Main Street thence West 392 feet to point of beginning, all in Section 17-92-51 and 20-92-51, Clay County, South Dakota.

Respondent currently has service rights to the entire annexed territory and has installed underground electric facilities serving three consumers therein.

VIII

On the 12th day of April, 1996 the Applicant annexed a tract of real property legally described as follows:

The West 1/2 of the NW 1/4 of Section 13, Township 92 North, Range 52 West of the 5TH P.M., Clay County, South Dakota, with the following exceptions: The South 660' of the SW 1/4 of the NW 1/4; and Lot H-1 of the West 1/2 of the NW 1/4; and the East 1/2 of the NE 1/4 of Section 14, Township 92 North, Range 52 West of the 5TH P.M., Clay County, South Dakota, with the following exceptions: The South 660' of the SE 1/4 of the NE 1/4; Lot H-2 of the East 1/2 of the NE 1/4.

Respondent currently has service rights in that portion of said annexed territory described as follows:

The West 1/2 of the NW 1/4 of Section 13, Township 92 North, Range 52 West of the 5TH P.M.; Clay County, South Dakota, with the exception of the South 660 feet of the SW 1/4 of the NW 1/4 and Lot H-1 of the West 1/2 of the SW 1/4.

and has installed electrical facilities along the East and South sides thereof, but serves no consumers therein.

IX

On the 21st day of October 1996, the Applicant City adopted a resolution to exercise its privilege granted by SDCL 49-34A-49 to purchase Respondent's utility properties and service rights within each of the three above mentioned annexed areas.

X

On the 30th day of October 1996, the Applicant served upon the Respondent its written offer to purchase Respondent's utility properties all in the manner provided by SDCL 49-34A-49 to 49-34A-52, inclusive.

XI

Six months later, i.e. on the 29th day of May 1997, Respondent acknowledged receipt of Applicant's offer and informed the Applicant, by letter bearing that date, that it would "not consent to the conditions set forth in the October 30, 1996 Notice of Intent"; and at all times since the 30th day of October 1996, Respondent has failed and refused to participate in any manner whatsoever with the Applicant in ascertaining the amount of the purchase price

calculated under SDCL 49-34A-50, which the Applicant is obligated to pay in exchange for its purchase.

XII

At all times since the 30th day of October 1996, the Respondent has failed and refused to "proceed to act" in giving effect to the mandatory provisions of SDCL 49-34A-52.

XIII

Because Respondent has refused "to act" as required by SDCL 49-34A-52, Applicant made and filed its application in this tribunal on the 16th day of October, 1997 and caused a copy to be served on the Respondent on the 20th day of October, 1997.

XIV

Respondent has neither answered the application nor proceeded or offered to proceed to act in any manner directed toward determining the amount to which it is now entitled pursuant to SDCL 49-34A-50.

XV

On the 16th day of November, 1997 Applicant prepared and filed in this proceeding its Interrogatories (First Set) and its Request for Production of Documents and served a copy thereof on Respondent for the purpose of discovering information necessary to determine the amount to which it is now entitled pursuant to SDCL 49-34A-50.

XVI

Respondent has now served upon Applicant its document entitled RESPONSE TO APPLICANT'S INTERROGATORIES (FIRST SET) AND RESPONDENT'S RESPONSE TO APPLICANT CITY OF VERMILLION'S REQUEST FOR PRODUCTION OF DOCUMENTS TO RESPONDENT and in said Response has refused to answer any of Applicant's Interrogatories, refused to produce any of the requested documents and has declined to furnish information in any form necessary to ascertain the amount to which it became entitled at the time Applicant purchased Respondent's utility properties and service rights within the three aforementioned annexed areas.

XVII

Respondent's refusal to act is a refusal to comply with the mandatory provisions of SDCL 49-34A-52 and constitutes a violation of SDCL 49-34A-66 by reason of which Respondent ought to be required by the order of this commission to pay

to the Applicant a civil penalty in the amount of \$1,000 for each violation.

XVIII

Applicant is, and at all times has been ready, willing and able to cooperate with Respondent in determining the sum to which it was or is entitled on transferring service rights within the three annexed areas from Respondent to Applicant and to pay said amount to Respondent.

XIX

Applicant has expended and will continue to be obligated to expend very extensive amounts of the skill, time and energies of its officers and employees in the planning, development, construction and installation of municipal improvements and infrastructure in the three above mentioned annexed areas and in those matters has expended in excess of \$1,645,912.00 and will be obligated to expend an additional sum of at least \$660,000.00 in completing its development of these three annexed areas.

XX

Applicant depends entirely on revenues from its electric utility service in the construction, maintenance and operation of its electric utility properties and electric service department and depends in substantial measure on revenues from that department for the financing of all planning, development, construction and installation of its improvements and infrastructure installed and constructed in said annexed areas; and by reason of these facts it is of great importance to the Applicant that it be granted leave to provide electric services to all consumers and potential consumers within said three annexed areas and to receive the revenues from said services beginning at earliest possible time it is by law authorized to serve the areas.

XXI

Providing for the assignment of service areas to electric utilities and granting them the exclusive right to provide electric service at retail within assigned areas is a part of the regulatory scheme uniformly applicable to all members of the class defined as "electric utility" and is a function of this Commission to be performed and administered pursuant to South Dakota Statute; and this Applicant believes it is now entitled to an order of the Commission ordering and providing:

1. That the Respondent be required to pay to the Applicant the sum of \$1,000 for each of its

40-ON-1A-8

violations of SDCL 49-34A-52 and 49-34A-66, each day of its delay being a separate offense.

2. That the Applicant immediately be assigned the exclusive right to provide electric services to all electric energy consumers within each of the three above described areas annexed to the City of Vermillion.

3. That the Applicant be determined to have been entitled to the assignment above requested retroactive to that date following October 30, 1996 when the Commission finds that the amount to which Respondent was entitled could have been determined if Respondent had acted with reasonable promptness in response to Applicant's offer, and to have all revenues from that date hence.

4. That subsequent to the relief above requested, the Commission proceed to determine that amount to which Respondent is entitled.

5. For such other and further relief as the Commission may deem reasonable and just.

Date: at Vermillion, South Dakota this 30th day of December, 1997.

THE CITY OF VERMILLION,
a municipal corporation

BY: William J. Radigan

William J. Radigan, Mayor
Municipal Building
25 Center Street
Vermillion, SD 57069
(605) 677-7056

STATE OF SOUTH DAKOTA)
 :SS
COUNTY OF CLAY)

William J. Radigan, being first duly sworn on his oath deposes and says that he is the duly elected, qualified and acting mayor of the City of Vermillion, a municipal corporation, named as applicant in the above and foregoing application and that he has read the same and knows the content thereof except as to those matters stated on

information and belief, and as to those matters he believes it to be true.

William J. Radigan
William J. Radigan

Subscribed and sworn to before me this 30th day of December, 1992.

Robert H. Hake
Notary Public

(SEAL)

My Commission Expires: Dec 11, 1998

City of
VERMILLION

25 CENTER STREET
VERMILLION, SOUTH DAKOTA 57068

PHONE: (605) 624-5641

January 7, 1998

Public Utilities Commission
ATTN: William Bullard, Executive Director
State Capitol Building
500 East Capitol Avenue
Pierre, SD 57501-5070



RECEIVED

JAN 08 1998

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

RE: City of Vermillion vs. Clay-Union Electric Corporation

Gentlemen:

Enclosed herewith the original and three (3) copies of each of the following documents, viz:

- 1) Affidavit in Support of Order to Show Cause
- 2) Motion for Order
- 3) Order to Show Cause
- 4) Memorandum of Authorities in Support of
- 5) Applicant's Motion to Show Cause
- 6) Certificate of Service

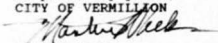
Will you please file these in your office and set a time for hearing on the Motion.

I am mailing a copy of this letter and the enclosures to Mr. John Gors, attorney for the Respondent.

I understand you will fix a time for hearing on the Motion and issue the Order to Show Cause. I assume that you will serve a copy of the Order to Show Cause on all persons entitled to notice. If I am mistaken in this, will you please advise me and return a copy of the signed Order to Show Cause to me, from which I will make copies to be served on necessary parties.

Thank you for your attention to this matter.

Respectfully yours,
CITY OF VERMILLION


Martin Weeks
City Attorney

MW/sd

Encl.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE
STATE OF SOUTH DAKOTA

RECEIVED

JAN 9 1998

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

THE CITY OF VERMILLION,)
a municipal corporation,)
Applicant,)
vs.)
CLAY-UNION ELECTRIC CORP.,)
INCORPORATED, a corporation,)
Respondent.)

AFFIDAVIT IN SUPPORT
OF
ORDER TO SHOW CAUSE

STATE OF SOUTH DAKOTA)
COUNTY OF CLAY)

William J. Radigan, being first duly sworn, on his oath
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Affiant is a resident of Vermillion, South Dakota, is
more than 21 years of age and is the duly elected, qualified
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municipal corporation duly organized under the laws of the
State of South Dakota, and its principal office is located
in the municipal offices building at 25 Center Street in
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people, and the City is an urban area.

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The Applicant owns and operates an electric utility
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Respondent currently has service rights in that portion of said annexed territory described as follows:

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X

On the 30th day of October 1996, the Applicant served upon the Respondent its written offer to purchase Respondent's utility properties all in the manner provided by SDCL 49-34A-49 to 49-34A-52, inclusive.

XI

Six months later, i.e. on the 29th day of May 1997, Respondent acknowledged receipt of Applicant's offer and informed the Applicant, by letter bearing that date, that it would "not consent to the conditions set forth in the October 30, 1996 Notice of Intent"; and at all times since the 30th day of October 1996, Respondent has failed and refused to participate in any manner whatsoever with the Applicant in ascertaining the amount of the purchase price

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calculated under SDCL 49-34A-50, which the Applicant is obligated to pay in exchange for its purchase.

XII

At all times since the 30th day of October 1996, the Respondent has failed and refused to "proceed to act" in giving effect to the mandatory provisions of SDCL 49-34A-52.

XIII

Because Respondent has refused "to act" as required by SDCL 49-34A-52, Applicant made and filed its application in this tribunal on the 16th day of October, 1997 and caused a copy to be served on the Respondent on the 20th day of October, 1997.

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Respondent has neither answered the application nor proceeded or offered to proceed to act in any manner directed toward determining the amount to which it is now entitled pursuant to SDCL 49-34A-50.

XV

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Respondent has now served upon Applicant its document entitled RESPONSE TO APPLICANT'S INTERROGATORIES (FIRST SET) AND RESPONDENT'S RESPONSE TO APPLICANT CITY OF VERMILLION'S REQUEST FOR PRODUCTION OF DOCUMENTS TO RESPONDENT and in said Response has refused to answer any of Applicant's Interrogatories, refused to produce any of the requested documents and has declined to furnish information in any form necessary to ascertain the amount to which it became entitled at the time Applicant purchased Respondent's utility properties and service rights within the three aforementioned annexed areas.

XVII

Respondent's refusal to act is a refusal to comply with the mandatory provisions of SDCL 49-34A-52 and constitutes a violation of SDCL 49-34A-66 by reason of which Respondent ought to be required by the order of this commission to pay

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to the Applicant a civil penalty in the amount of \$1,000 for each violation.

XVIII

Applicant is, and at all times has been ready, willing and able to cooperate with Respondent in determining the sum to which it was or is entitled on transferring service rights within the three annexed areas from Respondent to Applicant and to pay said amount to Respondent.

XIX

Applicant has expended and will continue to be obligated to expend very extensive amounts of the skill, time and energies of its officers and employees in the planning, development, construction and installation of municipal improvements and infrastructure in the three above mentioned annexed areas and in those matters has expended in excess of \$1,645,912.00 and will be obligated to expend an additional sum of at least \$660,000.00 in completing its development of these three annexed areas.

XX

Applicant depends entirely on revenues from its electric utility service in the construction, maintenance and operation of its electric utility properties and electric service department and depends in substantial measure on revenues from that department for the financing of all planning, development, construction and installation of its improvements and infrastructure installed and constructed in said annexed areas; and by reason of these facts it is of great importance to the Applicant that it be granted leave to provide electric services to all consumers and potential consumers within said three annexed areas and to receive the revenues from said services beginning at earliest possible time it is by law authorized to serve the areas.

XXI

Providing for the assignment of service areas to electric utilities and granting them the exclusive right to provide electric service at retail within assigned areas is a part of the regulatory scheme uniformly applicable to all members of the class defined as "electric utility" and is a function of this Commission to be performed and administered pursuant to South Dakota Statute; and this Applicant believes it is now entitled to an order of the Commission ordering and providing:

1. That the Respondent be required to pay to the Applicant the sum of \$1,000 for each of its

violations of SDCL 49-34A-52 and 49-34A-66, each day of its delay being a separate offense.

2. That the Applicant immediately be assigned the exclusive right to provide electric services to all electric energy consumers within each of the three above described areas annexed to the City of Vermillion.

3. That the Applicant be determined to have been entitled to the assignment above requested retroactive to that date following October 30, 1996 when the Commission finds that the amount to which Respondent was entitled could have been determined if Respondent had acted with reasonable promptness in response to Applicant's offer, and to have all revenues from that date hence.

4. That subsequent to the relief above requested, the Commission proceed to determine that amount to which Respondent is entitled.

5. For such other and further relief as the Commission may deem reasonable and just.

Done at Vermillion, South Dakota this 30th day of December, 1997.

THE CITY OF VERMILLION,
a municipal corporation

BY: William J. Radigan
William J. Radigan, Mayor
Municipal Building
25 Center Street
Vermillion, SD 57069
(605) 677-7056

STATE OF SOUTH DAKOTA)
:SS
COUNTY OF CLAY)

William J. Radigan, being first duly sworn on his oath deposes and says that he is the duly elected, qualified and acting mayor of the City of Vermillion, a municipal corporation, named as applicant in the above and foregoing application and that he has read the same and knows the content thereof except as to those matters stated on

information and belief, and as to those matters he believes it to be true.

William J. Radigan
William J. Radigan

Subscribed and sworn to before me this 30th day of
December, 1992.

Walter Hale
Notary Public

(SEAL)

My Commission Expires: Dec 11, 1998

THE PUBLIC UTILITIES COMMISSION
OF THE
STATE OF SOUTH DAKOTA

RECEIVED

JAN 18 1998

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

THE CITY OF VERMILLION,	)	
a municipal corporation,	)	
	)	
Applicant,	)	
	)	
vs.	)	MOTION FOR ORDER FIXING
	)	CIVIL PENALTY AND
CLAY-UNION ELECTRIC COOP.,	)	ASSIGNING ELECTRIC UTILITY
INCORPORATED, a corporation,	)	SERVICE RIGHTS
	)	
Respondent,	)	

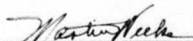
Applicant City of Vermillion moves the Commission for an order granting to it the following relief

- 1 Determining that the Respondent has refused to "act" with respect to determining the cash consideration to be paid by the Applicant with regard to service rights in any of the three annexed areas which are the subject of this proceeding, that the Respondent stands in defiance of SDCL 49-34A-52 and 49-34A-66 in each such case, and assessing in favor of the Applicant a civil penalty in the amount of \$1,000.00 for each violation in each such case
- 2 Assigning, without further delay, the exclusive right to provide electric services to all electric energy consumers within each of the three areas annexed to the City of Vermillion which are the subject of this proceeding
- 3 Determining that the Applicant has been entitled to the territorial assignments hereinabove mentioned and to the revenues generated from electric service therein since October 30, 1997.
- 4 Ordering and directing the Respondent to answer immediately and fully the Applicant's Interrogatories and to produce for inspection and copying the several documents requested
- 5 Awarding Applicant such other and further relief as the Commission may deem reasonable and just.

01412608

This Motion is made and based on the annexed Affidavit of William J. Radigan,
Mayor of the City of Vermillion and on all the pleadings, documents, records and files in
this action

Dated at Vermillion, South Dakota this 7th day of January, 1998



Martin Weeks, City Attorney
Attorney for the Applicant
BOGUE, WEEKS, BILLINGS & COLLIER
P.O. Box 435
Vermillion, SD 57069-0435
(605) 624-2619

THE PUBLIC UTILITIES COMMISSION
OF THE
STATE OF SOUTH DAKOTA

RECEIVED

JAN 08 1998

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

THE CITY OF VERMILION,)
a municipal corporation.)

Applicant.)

vs.)

ORDER TO SHOW CAUSE

CLAY-UNION ELECTRIC COOP.,)
INCORPORATED, a corporation.)

Respondent.)

The Public Utilities Commission having considered the attached Affidavit and Motion of the City of Vermillion, a municipal corporation, Applicant in the above entitled proceeding and having considered all the documents filed herein, including the Affidavit of William J. Radigan, Mayor of said City, and the Motion of Martin Weeks, City Attorney, for the relief mentioned in said Affidavit,

NOW, THEREFORE, it is hereby ORDERED that the Respondent, Clay-Union Electric Cooperative, a corporation, be and hereby is required to show cause before the Commission at the office of the South Dakota Utilities Commission in the State Capital Building located at 700 Governors Drive in the City of Pierre, South Dakota on the day of _____, 1998, at _____ o'clock ____ M. why the relief prayed for in said Motion should not be granted.

It is further ORDERED that a copy of the Affidavit of William J. Radigan, a copy of this Order to Show Cause, a copy of the City's Motion, and a copy of the City's supporting Memorandum be served on John Gors, attorney for the Respondent at his office located at 10 Austin Avenue in the City of Vermillion, South Dakota 57069 at least 20 days before the time fixed for showing cause and that any response thereto by the Respondent be served upon Martin Weeks, attorney for the Applicant, at least 5 days before that time.

Dated this _____ day of _____, 1998.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

ATTEST:

BY: _____

THE PUBLIC UTILITIES COMMISSION
OF THE
STATE OF SOUTH DAKOTA

RECEIVED

JAN 08 1998

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

THE CITY OF VERMILLION,)
a municipal corporation,)

)
Applicant,)

vs.)

CLAY-UNION ELECTRIC COOP.,)
INCORPORATED, a corporation,)

)
Respondent.)

MEMORANDUM OF AUTHORITIES
IN SUPPORT OF APPLICANT'S
MOTION TO SHOW CAUSE

NATURE OF THIS PROCEEDING

This is a proceeding before this Commission on the application of the City of Vermillion for the determination of the cash sum which the City of Vermillion is obligated to pay to the Respondent, Clay-Union Electric Corp. for the assignment of its utility rights and property located within three separate areas recently annexed to the City of Vermillion, pursuant to SDCL 49-34A-49 to 49-34A-53 I, inclusive.

JURISDICTION

Jurisdiction to determine the value of utility properties assigned pursuant to SDCL 49-34A-49, et seq. is specifically granted to the South Dakota Public Utilities Commission. SDCL 49-34A-42 states in part, "The Commission shall have the jurisdiction to enforce the assigned service areas established by Sections 49-34A-42 to 49-34A-44, inclusive, and 49-34A-48 to 49-34A-59, inclusive, and SDCL 49-34A-51 authorizes the Commission to determine the amount of the payment in accordance with the provisions of Section 49-34A-50."

FACTS

The Applicant, City of Vermillion, commenced this proceeding by filing its application with the Commission on the 20th day of October, 1997. On or prior to that date, the City's application was filed with the Commission, and a copy of the application was served on the Respondent as appears from the Sheriff's Return of Service filed herein. No response was made or filed by the Respondent; and on the 14th day of November, the Applicant made and filed its Interrogatories (First Set) and its Request for the Production of Documents, both requesting the Respondent to produce information relevant to a determination of the value of the properties and rights in question. Respondent has not answered any of the questions propounded to it in the Interrogatories.

and has not produced any of the documents requested in its Request for Production of Documents. Instead, it has declined to answer the Interrogatories and refused to present for copying or otherwise, any of the requested documents bearing on the question of value. Instead, Respondent has objected to the relevancy of the Interrogatories and has proposed that the matter is not properly before this Commission. Among other things, Respondent states, "Respondent declines to sell their facilities and service territory at any price."

A more detailed statement of the facts based on which Applicant's Motion for Order to Show Cause is set forth in the Affidavit of William J. Radigan, Mayor of the City of Vermillion. The Affidavit is filed herein and incorporated as a part of this fact statement by reference.

ISSUES

The sole issue before the Commission at this time is why the Applicant should not be entitled to an Order granting it relief as follows:

1. Determining that the Respondent has refused to "act" with respect to determining the cash consideration to be paid by the Applicant with regard to service rights in any of the three annexed areas which are the subject of this proceeding, that the Respondent stands in defiance of STCL 49-34A-52 and 49-34A-66 in each such case, and assessing in favor of the Applicant a civil penalty in the amount of \$1,000.00 for each violation in each such case.
2. Assigning, without further delay, the exclusive right to provide electric services to all electric energy consumers within each of the three areas annexed to the City of Vermillion which are the subject of this proceeding.
3. Determining that the Applicant has been entitled to the territorial assignments hereinabove mentioned and to the revenues generated from electric service therein since October 30, 1997.
4. Ordering and directing the Respondent to immediately answer fully the Applicant's Interrogatories and to produce for inspection and copying the several documents requested.
5. Awarding Applicant such other and further relief as the Commission may deem reasonable and just.

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MEMORANDUM OF AUTHORITIES

Statutory Enactments

In 1975 the South Dakota Legislature enacted Chapter 283 of the 1975 Session Laws. This enactment is a broad statutory scheme for regulating electric and gas utilities, as the name of the Act implies. The purpose of the Act is stated to be, "An Act to amend SDCL 6-12-6, 9-35-1 and subdivision (3) of SDCL 47-21-1, and to repeal SDCL 49-41-1 to 49-41-33, inclusive, to regulate the retail rates charged by public utilities furnishing electric service or natural, manufactured or mixed gas, to establish geographic service areas for electric utilities, and to prescribe penalties for the violations of the provisions thereof." (Emphasis Supplied)

The 1975 Session Law, Chapter 283 is now SDCL 49-34A. SDCL 49-34A-42 granted each electric utility the exclusive right to provide electric service at retail at each and every location where it is serving a customer as of March 21, 1975 and to future customers in its assigned area. The Legislature avoided the constitutional pitfall of granting irrevocable franchises (See SD Constitution, Article VI, Section 12) by granting to this body the authority to make adjustments in service areas. Among the adjustments provided for in the enactment, was a grant of authority to municipal corporations to purchase any electrical utility properties and service rights within the annexed areas owned by any electric utility and jurisdiction in this Commission to determine the value of the assignment of the area when the parties are unable to agree. (See SDCL 49-34A-49.) Under that Section, a municipality which owns and operates an electric utility has the option to serve all customers within an annexed area provided it shall notify the utility previously serving the annexed area of its decision. The City of Vermillion elected to serve the customers in the three recently annexed areas described in its Application filed herein. The City, within one year following annexation of the areas notified in writing, Clay-Union Electric Corp. of its decision to serve each of the territories and agreed to pay to Clay-Union a cash consideration calculated in accordance with the provisions of SDCL 49-34A-50. Defying the mandatory provisions of SDCL 49-34A-52, Clay-Union Electric Corp. has failed and refused to proceed to take any of that action which is compulsory under SDCL 49-34A-50 to 49-34A-53. Respondent's defiance of the statute has brought the City to make and file its Application for Determination by this Commission of the price to be paid for the assigned area, all as required by SDCL 49-34A-51.

Case Authorities

The Respondent did not answer Plaintiff's Application filed herein. This being so, the factual allegations of the Application must be taken as true. In an effort to bring to light those facts necessary to determine the cash consideration to be paid to the Respondent, the Applicant prepared and served upon the Respondent its Interrogatories (First Set) and its Request for the Production of Documents (First Set). The only response to the Interrogatories and the Request for Production of Documents is Respondent's refusal to answer the Interrogatories or produce documents, coupled with

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Respondent's statement at Paragraph IV that it declines to sell its facilities and service territory at any price. Counsel then mentions that Respondent believes that the controlling statutes are unconstitutional and pre-empted by the Federal Supremacy Clause and concludes with an offer to furnish all relevant information in the event that the South Dakota Statutes are held to be constitutional.

Respondent overlooks the fact that the Statutes controlling in this case have already been held to be constitutional. A public utility does not have a property interest in its service territory. Matter of Certain Territorial Electric Boundaries, etc. (SD 1979) 281 N.W.2d 65. Matter of Certain Territorial Electric Boundaries, etc. (SD 1975) 281 N.W.2d 72. Both cases originated in the Public Utilities Commission. Both were ultimately appealed to the South Dakota Supreme Court and on Page 70 of the report of the Court's decision in the first of said two cases, the Supreme Court said:

"We next turn to the question of whether SDCL 49-34A violates that part of the South Dakota Constitution, Article VI, Section 12, which reads: "No law making any irrevocable right of privilege, franchise, or community shall be passed."

The statute does not explicitly make the franchise irrevocable. SDCL 29-34A-42 does, however, provide for "exclusive service areas." This statute must be read together with others:

SDCL 49-34A-49 through 49-34A-55, permits a municipality - owned system to purchase facilities of another electric utility operating within the municipal boundaries.

Thus, it will be seen that SDCL 49-34A-49 through 49-34A-55, far from being unconstitutional, are elements that prevent the entire Chapter SDCL 49-34A from being unconstitutional. Utility service areas are privileges rather than property rights and by SD Constitution Article VI, Section 12 may not be established by irrevocable grants.

The South Dakota Court went further in the second of the two cited cases. On Page 75 of its opinion, the Court said:

We now reaffirm that franchise rights conferred upon a utility by the State are subject to control by the Legislature. Citing cases. The rights granted N.E.C. under SDCL 49-41-7 and 8 are not irrevocable franchises.

On Page 76 the court said:

We conclude that designation of boundary lines, as part of an allocation system is a regulatory procedure that utility companies accept as part of the franchise, and is not within the purview of constitutional provisions forbidding the taking of private property without compensation. Chicago and N.W. RY Company vs. Dougherty, 39 SD 147, 163 N.W. 715 (1917).

In further support of Applicant's position, we cite City of Milbank, et. al. vs. Dakota Central Telephone Company, et. al., (SD 1916) 159 N.W. 99, where the Court considered the relationship between regulatory control over a public utility and the exercise of the power of eminent domain, and held that such controls constitute a mere regulation of a public service corporation, if not under the implied power resulting from the nature of the franchise enjoyed by the Corporation, then under the police powers of the State.

Respondent next contends, without any facts or case law to support it, that the South Dakota Statutes on which the Applicant relies are pre-empted by the Federal Supremacy Clause in that the transfer of territory by the Applicant would impair the Respondent's ability to pay their federal loans and frustrate the federal purpose of a federal statutory scheme. The Rural Electrification Act (REA) found at 7 U.S.C. 901. That the transfer of territorial rights requested in this case would impair Respondent's ability to repay its federal loan and serve the remainder of its customers may not rest upon a presumption, but must be proved. The State of Minnesota does not have a statute similar to South Dakota's 1975 SL 283, but employs condemnation procedure to reach similar results in situations like that presented in this case. In that respect, the laws of the two states are different. The decision of the Minnesota Supreme Court in Rochester vs. People's Co-op. Power Association, 505 N.W.2d. 621 (MN. 1993) is directly in point with regards to the Federal Supremacy question, however. At Page 626 of that opinion, the Court said:

Similarly, here, we conclude a municipality's condemnation of an REA financed cooperative's property is authorized unless condemnation so seriously compromises the REA's interest, including the ability of the cooperative to pay its loans, as to be implicitly pre-empted. In the present case, the United States has not demonstrated that the City's condemnation of peoples' utility rights will compromise the REA's interests to a greater degree than any other condemnation.

See also City of Morgan City vs. South LA Elect. Co-op., 49 F.3d 1074 (5th Cir. 1995), where the matter of pre-emption was fully considered and where the evidence necessary in making a decision on the point was fully considered.

In Stillwell, Okl. vs. Ozarks Rural Elect. Co-op Corp., 79 F.3d 1038 (10th Cir., 1996), the Court considered the pre-emption question and made a very interesting observation:

More generally, Ozarks urges that these cases support its position that Stillwell is precluded from "skimming the cream" away from Ozarks' customer base. Essentially, this is to argue that the R.E. Act contemplates a system where rural customers are subsidized by relying on revenues

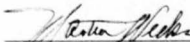
generated from urban customers. We find no such intent either express or implied in the language of the R.E. Act. The R.E. Act subsidizes rural communities by offering low interest financing, not by making available to them more lucrative markets for electric power. Citing Waubash Valley, 988 F.2d at 1483-84.

CONCLUSION

SDCL 49-34A-49 codified a legislative scheme for orderly transfer of utility service areas in territories annexed to municipalities. Once initiated by action of the municipality, the procedure to be followed is mandatory, and when properly followed, it is simple and direct. The City of Vermillion is entitled to serve in its annexed territories without unnecessary delay. Respondent ought not to be permitted to profit by its delay, and the Commission should forthwith shift service rights to the City and then determine the cash consideration to be paid when the Respondent is ready and willing to comply with the Act. Further, the Commission should impose the civil penalty authorized under SDCL 49-34A-66 with respect to each of the three areas by way of compensating the City for its unnecessary and additional expenses and loss of revenues.

Dated at Vermillion, South Dakota, this 7th day of January, 1998.

Respectfully submitted,



Martin Weeks, City Attorney
Attorney for the Applicant
BOGUE, WEEKS, BILLINGS& COLLIER
P.O. Box 435
Vermillion, SD 57069-0435
(605) 624-2619

014126276
THE PUBLIC UTILITIES COMMISSION
OF THE
STATE OF SOUTH DAKOTA

THE CITY OF VERMILLION,)
a municipal corporation.)

)
Applicant,)

vs.)

CERTIFICATE OF SERVICE

)
CLAY-UNION ELECTRIC COOP.,)
INCORPORATED, a corporation,)

)
Respondent.)

Service of the following documents:

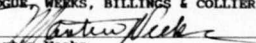
- 1) Letter from Martin Weeks, Attorney for Applicant,
dated January 7, 1998 to PUC;
- 2) Affidavit in Support of Order to Show Cause;
- 3) Motion for Order;
- 4) Order to Show Cause; and
- 5) Memorandum of Authorities in Support of
Applicant's Motion to Show Cause.

were served upon the Respondent, Clay-Union Electric Coop.,
Inc., by mailing true and correct copies thereof on January
7, 1998, to the attorney for said Respondent at his last
known post office address, viz:

Mr. John Gors
Attorney at Law
P.O. Box 396
10 Austin Avenue
Vermillion, SD 57069

by depositing said copies in the United States Mail, with
first class postage thereon prepaid, at Vermillion, South
Dakota.

~~BOGUE, WEEKS, BILLINGS & COLLIER~~

BY: 

Martin Weeks
Attorneys for the Applicant
P.O. Box 435
Vermillion, SD 57069-0435
(605) 624-2619

**DeVany
&
Gors**

Attorneys at Law,
10 Austin Street,
P.O. Box 396,
Vermillion, SD 57069-0396

John S. DeVany
Attorney at Law
John A. Gors
Attorney at Law

FAX

Date: 8/17/98
Number of pages including cover sheet: _____

To: Public Utilities Commission
Attn: Mr. William Bullard

Phone: _____
Fax phone: 605-773-5809
CC: _____

From: John A. Gors
Re: Clair Union Electric

Phone: 605-624-1231/605-624-3705
Fax phone: 605-624-6678

REMARKS

☐ Urgent ☐ For your review ☐ Reply ASAP ☐ Please comment

FACSIMILE DELIVERY INSTRUCTIONS

This facsimile contains information which (A) may be legally privileged, proprietary in nature, or otherwise protected by law from disclosure, and (B) is intended only for the use of the Addressee(s) named above. If you are not the Addressee, or the person responsible for delivering this to the Addressee(s), you are hereby notified that reading, copying or distributing this facsimile is prohibited. If you have received this facsimile in error, please telephone us immediately and mail the facsimile back to us at the above address. Thank you.

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EL 97-020

DeVany & Gors

ATTORNEYS AT LAW

P.O. Box 196 • 10 Austin Street

Vermillion, South Dakota 57069

Telephone: 605-624-3295 • 605-624-3231

Fax: 605-624-6628

John S. DeVany
Attorney At Law

John A. Gors
Attorney At Law

February 17, 1998

Mr. William Bullard
Executive Director
Public Utilities Commission
State Capitol Building
500 East Capitol Avenue
Pierre, SD 57501-5070

Re: The City of Vermillion, SD vs. Clay-Union Electric
Corporation

Dear Mr. Bullard:

A telephonic hearing is scheduled for February 18, 1998, at 10:00 a.m. to determine whether or not the Commission should issue it's Order to Show Cause pursuant to a motion for such relief made by the City of Vermillion. I wanted to give the Commission a brief statement of Clay-Union's position prior to the hearing.

It is important that the Commission know that Clay-Union Electric has no intention to defy an order issued by the Commission. Any order issued in the course of these proceedings shall be complied with in a timely fashion.

Clay-Union Electric has refused to transfer certain parts of it's service territory to the City after being requested to do so pursuant to SDCL 49-34A. Clay-Union understands the procedure contained in the statutes, but believes that other issues exist. Clay-Union identifies those issues as follows:

1. Whether SDCL 49-34A is in violation of the South Dakota Constitution for failure to provide just compensation for the annexed property.

Article VI, Section 13 of the South Dakota Constitution states that no private property shall be taken for

Mr. William Bullard
Executive Director
Public Utilities Commission
February 17, 1998
Page 2

Article VI, Section 13 of the South Dakota Constitution states that no private property shall be taken for public use without just compensation. Just compensation has been defined as full market value at the time of taking; the highest price for which property can be sold on the open market considering its best and most profitable use. SDCL 49-34A-50 sets a formula to use in calculating the compensation a cooperative shall receive from a municipality when their territory is annexed. Clay-Union believes this statute does not provide just compensation and is therefore unconstitutional.

2. Whether SDCL 49A-34 is pre-empted by the federal legislation authorizing and funding the Rural Utilities Service, a federal agency.

Clay-Union Electric is a borrower from Rural Utilities Service (RUS). This debt is a federal obligation. The annexation of Clay-Union's service territory with the concurrent loss of present revenue and future growth may impair Clay-Union's ability to repay their federal debt. A state law which impairs a federal obligation must give way to the federal statutes. There have been federal court cases which have found on both sides of this issue. There is no clear legal authority established which leave the issue open to question.

Clay-Union Electric should not be denied their right to pursue these issues in the proper forum. It may be that both issues could be pursued simultaneously in federal court or the constitutional question could be pursued in South Dakota state court. A final decision has not been made by the Board of Directors of Clay-Union Electric. Research and discussions with RUS regarding their assistance and support with any federal litigation are ongoing. Clay-Union Electric will take legal action on one or both of these issues; that has been conclusively determined.

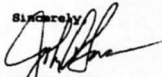
Clay-Union believes that the Commission lacks the statutory and regulatory authority to make a binding decision on either of the issues which may be litigated. Issue #1 involves

Mr. William Bullard
Executive Director
Public Utilities Commission
February 17, 1998
Page 3

determining whether a state legislative enactment is constitutional. The second involves a federal question. The Commission is a regulatory body, not a judicial body and is not empowered to address either of these issues.

Clay-Union Electric believes that the Commission should stay any further proceedings on this matter until the state or federal issues have been litigated to a conclusion. Only then will the Commission have a clear direction from the appropriate court as to the proper application of the law.

Sincerely,



JOSEPH A. GORS
Attorney

JAG/ka
cc: Martin Weeks, Esq.

THIS IS BEING FAXED THIS 17TH DAY OF FEBRUARY, 1998. NO HARD COPY IS BEING MAILED.

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE APPLICATION OF	)	ORDER TO SHOW CAUSE
THE CITY OF VERMILLION FOR	)	
DETERMINATION OF PURCHASE PRICE OF	)	EL97-020
ELECTRIC FACILITIES IN ANNEXED AREAS	)	

On October 20, 1997, the Public Utilities Commission (Commission) received an Application for Determination of Purchase Price of Electric Facilities in Annexed Areas (Application) from the City of Vermillion (Vermillion). In its Application, Vermillion stated that it annexed some of Clay-Union Electric Corporation's (Clay-Union Electric) service area during the time period of November 20, 1995, through April 12, 1996. On October 21, 1996, Vermillion adopted a resolution to purchase the service rights and electric utility properties from Clay-Union Electric pursuant to SDCL 49-34A-49. On October 30, 1996, Vermillion sent to Clay-Union Electric a Notice of Intent to Purchase Electric Utility Properties in Annexed Areas, with the amount to be calculated in accordance with SDCL 49-34A-50. On May 29, 1997, Clay-Union Electric informed Vermillion that it would not consent to the conditions contained in the Notice of Intent to Purchase. In its Application, Vermillion requests that the Commission determine the amount of the payment pursuant to 49-34A-50.

According to the Application, the annexed areas that are currently served by Clay-Union Electric are as follows:

The North 220 feet of the West 298 feet of the East 588 feet of the East Half of the Southeast Quarter (E $\frac{1}{2}$ SE $\frac{1}{4}$) of Section 12, Township 92, Range 52, West of the 5th P.M.

Beginning at the Southwest section corner of Sec. 17-92-51 thence North 2652 feet on the center line of Crawford Road to the West $\frac{1}{4}$ corner of Sec. 17-92-51 thence East 331 feet, thence South 548.86 feet, thence West 153 feet, thence South 777.57 feet, thence East 21.83 feet, thence South 1126.43 feet, thence East 2452 feet, thence South 200 feet to the South $\frac{1}{4}$ corner of Sec. 17-92-51 thence West 2169 feet on the center line of Main Street thence South 339 feet, thence West 285 feet, thence North 256 feet, thence East 68 feet, thence South 100 feet, thence East 126 feet, thence North 183 feet to center line of Main Street thence West 392 feet to point of beginning, all in Section 17-92-51 and 20-92-51, Clay County, South Dakota.

The West $\frac{1}{2}$ of the NW $\frac{1}{4}$ of Section 13, Township 92 North, Range 52 West of the 5th P.M., Clay County, South Dakota, with the exception of the South 660 feet of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ and Lot H-1 of the West $\frac{1}{2}$ of the SW $\frac{1}{4}$.

On January 7, 1998, Vermillion filed an Affidavit in Support of Order to Show Cause, a Motion for Order, an Order to Show Cause, and a Memorandum of Authorities in Support of Motion to Show Cause. Vermillion requested that the Commission issue an Order to Show Cause why the following relief should not be granted: (1) a civil penalty assessed against Clay-Union Electric in the amount of \$1000.00 for each violation of SDCL 49-34A-52 and 49-34A-66; (2) the assignment to Vermillion of the exclusive right to provide electric services to all electric energy consumers within each of the three areas annexed by Vermillion; (3) a finding that Vermillion is entitled to the territorial assignments and to the revenues generated from electric service therein since October 30, 1997; (4) ordering Clay-Union Electric to answer Vermillion's interrogatories and produce documents as requested for inspection and copying; and (5) awarding Vermillion other and further relief as the Commission may find is just and reasonable.

In a letter dated February 17, 1998, Clay-Union Electric affirmed that it has refused to transfer certain parts of its service territory to Vermillion. Clay-Union Electric further stated that it believed that two issues were presented by the Application that could not be answered by the Commission. The first issue is whether SDCL 49-34A is in violation of the South Dakota Constitution for failure to provide just compensation for the annexed property. The second issue is whether SDCL 49-34A is preempted by the federal legislation authorizing and funding the Rural Utilities Service. Clay-Union Electric stated that it would pursue these issues in the proper forum.

At its February 18, 1998, meeting, the Commission considered this matter. The Commission listened to the arguments made by both parties and took the matter under advisement. At its February 24, 1998, meeting, the Commission again considered this matter. The Commission has jurisdiction over this matter pursuant to SDCL Chapter 1-26, SDCL 49-34A-42 to 49-34A-52, 49-34A-66 to 49-34A-69, and ARSD 20.10.01.45. The Commission voted unanimously to issue an Order to Show Cause.

PLEASE TAKE NOTICE that a hearing shall be held at 1:30 p.m., March 26, 1998, in Room 468, State Capitol Building, Pierre, South Dakota. At the hearing, Clay-Union Electric shall show cause why the Commission should not take any of the following actions: (1) pursuant to SDCL 49-34A-66, assess a civil penalty against Clay-Union in an amount of not less than one hundred dollars nor more than one thousand dollars for each violation of SDCL 49-34A-52 and 49-34A-66; (2) assign to Vermillion the exclusive right to provide electric services to all electric energy consumers within each of the three areas annexed by Vermillion (as listed above) which are currently served by Clay-Union Electric; (3) find that Vermillion is entitled to the territorial assignments and to the revenues generated from electric service in the annexed areas since October 30, 1997; and (4) order Clay-Union Electric to answer Vermillion's interrogatories and produce documents as requested for inspection and copying.

The hearing will be conducted pursuant to SDCL Chapter 1-26. All parties have the right to attend and represent themselves or be represented by an attorney. However, such rights and other due process rights shall be forfeited if not exercised at the hearing. If you or your representative fail to appear at the time and place set for the hearing, the decision of whether or not the relief is granted will be based on arguments and authorities presented at the hearing. A final decision may be issued by default pursuant to SDCL 1-26-20.

The Commission, after examining the arguments and authorities presented by the parties, shall decide whether any of the above listed actions shall be ordered by the Commission. A Final Decision may be appealed by the parties to the Circuit Court and the South Dakota Supreme Court as provided by law.

It is therefore

ORDERED, that a hearing on this Order to Show Cause shall be held on March 26, 1998, beginning at 1:30 p.m., in Room 468, State Capitol Building, Pierre, South Dakota, and it is

FURTHER ORDERED, that the documents filed by Vermillion in support of its request for an Order to Show Cause are hereby attached to this Order.

Dated at Pierre, South Dakota, this 11th day of March, 1998

CERTIFICATE OF SERVICE The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By	<u>William A. Kake</u>
Date	<u>3/11/98</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE
STATE OF SOUTH DAKOTA

RECEIVED

JAN 6 1998

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

THE CITY OF VERMILLION,)
a municipal corporation,)

Applicant,)

vs.)

CLAY-UNION ELECTRIC CORP.,)
INCORPORATED, a corporation,)

Respondent.)

AFFIDAVIT IN SUPPORT
OF
ORDER TO SHOW CAUSE

STATE OF SOUTH DAKOTA)
:
COUNTY OF CLAY)

William J. Radigan, being first duly sworn, on his oath
deposes and says:

I

Affiant is a resident of Vermillion, South Dakota, is
more than 21 years of age and is the duly elected, qualified
and acting Mayor of the City of Vermillion.

II

The City of Vermillion, Applicant herein, is a
municipal corporation duly organized under the laws of the
State of South Dakota, and its principal office is located
in the municipal offices building at 25 Center Street in
Vermillion, Clay County, South Dakota.

III

The population of the City of Vermillion exceeds 10,000
people, and the City is an urban area.

IV

The Applicant owns and operates an electric utility
serving customers in some areas outside of and adjacent to
the City of Vermillion.

V

Clay-Union Electric Cooperative, the Respondent herein,
is an electric utility company organized under the laws of
the State of South Dakota, with its principal office located

at 1410 East Cherry Street in Vermillion, South Dakota and serves consumers in an area including portions of Clay, Union, and Yankton Counties and including territory adjacent to and within the boundaries of the Applicant City.

VI

On the 20th day of November, 1995 the Applicant annexed a tract of real property legally described as follows:

The East Half (E 1/2) of the Southeast Quarter (SE 1/4) of Section Twelve (12), Township Ninety-two (92), Range Fifty-two (52) West of the 5TH P.M., except the West 732 feet of the North 1,475 feet thereof, Clay County, South Dakota.

Respondent currently has service rights in that portion of said annexed territory described as follows:

The North 220 feet of the West 298 feet of the East 588 feet of the East Half of the Southeast Quarter (E 1/2 SE 1/4) of Section 12, Township 92, Range 52, West of the 5th P.M.

and has installed electrical facilities to serve one consumer therein.

VII

On the 11th day of March, 1996 the Applicant annexed a tract of real property legally described as follows:

Beginning at the Southwest section corner of Sec. 17-92-51 thence North 2652 feet on the center line of Crawford Road to the West 1/4 corner of Sec. 17-92-51 thence East 331 feet, thence South 548.86 feet, thence West 153 feet, thence South 777.57 feet, thence East 21.83 feet, thence South 126.43 feet, thence East 2452 feet, thence South 200 feet to the South 1/4 corner of Sec. 17-92-51 thence West 2169 feet on the center line of Main Street thence South 339 feet, thence West 285 feet, thence North 256 feet, thence East 68 feet, thence South 100 feet, thence East 126 feet, thence North 183 feet to center line of Main Street thence West 392 feet to point of beginning, all in Section 17-92-51 and 20-92-51, Clay County, South Dakota.

Respondent currently has service rights to the entire annexed territory and has installed underground electric facilities serving three consumers therein.

VIII

On the 12th day of April, 1996 the Applicant annexed a tract of real property legally described as follows:

The West 1/2 of the NW 1/4 of Section 13, Township 92 North, Range 52 West of the 5TH P.M., Clay County, South Dakota, with the following exceptions: The South 660' of the SW 1/4 of the NW 1/4; and Lot H-1 of the West 1/2 of the NW 1/4; and the East 1/2 of the NE 1/4 of Section 14, Township 92 North, Range 52 West of the 5TH P.M., Clay County, South Dakota, with the following exceptions: The South 660' of the SE 1/4 of the NE 1/4; Lot H-2 of the East 1/2 of the NE 1/4.

Respondent currently has service rights in that portion of said annexed territory described as follows:

The West 1/2 of the NW 1/4 of Section 13, Township 92 North, Range 52 West of the 5TH P.M.; Clay County, South Dakota, with the exception of the South 660 feet of the SW 1/4 of the NW 1/4 and Lot H-1 of the West 1/2 of the SW 1/4.

and has installed electrical facilities along the East and South sides thereof, but serves no consumers therein.

IX

On the 21st day of October 1996, the Applicant City adopted a resolution to exercise its privilege granted by SDCL 49-34A-49 to purchase Respondent's utility properties and service rights within each of the three above mentioned annexed areas.

X

On the 30th day of October 1996, the Applicant served upon the Respondent its written offer to purchase Respondent's utility properties all in the manner provided by SDCL 49-34A-49 to 49-34A-52, inclusive.

XI

Six months later, i.e. on the 29th day of May 1997, Respondent acknowledged receipt of Applicant's offer and informed the Applicant, by letter bearing that date, that it would "not consent to the conditions set forth in the October 30, 1996 Notice of Intent"; and at all times since the 30th day of October 1996, Respondent has failed and refused to participate in any manner whatsoever with the Applicant in ascertaining the amount of the purchase price

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calculated under SDCL 49-34A-50, which the Applicant is obligated to pay in exchange for its purchase.

XII

At all times since the 30th day of October 1996, the Respondent has failed and refused to "proceed to act" in giving effect to the mandatory provisions of SDCL 49-34A-52.

XIII

Because Respondent has refused "to act" as required by SDCL 49-34A-52, Applicant made and filed its application in this tribunal on the 16th day of October, 1997 and caused a copy to be served on the Respondent on the 20th day of October, 1997.

XIV

Respondent has neither answered the application nor proceeded or offered to proceed to act in any manner directed toward determining the amount to which it is now entitled pursuant to SDCL 49-34A-50.

XV

On the 16th day of November, 1997 Applicant prepared and filed in this proceeding its Interrogatories (First Set) and its Request for Production of Documents and served a copy thereof on Respondent for the purpose of discovering information necessary to determine the amount to which it is now entitled pursuant to SDCL 49-34A-50.

XVI

Respondent has now served upon Applicant its document entitled RESPONSE TO APPLICANT'S INTERROGATORIES (FIRST SET) AND RESPONDENT'S RESPONSE TO APPLICANT CITY OF VERMILLION'S REQUEST FOR PRODUCTION OF DOCUMENTS TO RESPONDENT and in said Response has refused to answer any of Applicant's Interrogatories, refused to produce any of the requested documents and has declined to furnish information in any form necessary to ascertain the amount to which it became entitled at the time Applicant purchased Respondent's utility properties and service rights within the three aforementioned annexed areas.

XVII

Respondent's refusal to act is a refusal to comply with the mandatory provisions of SDCL 49-34A-52 and constitutes a violation of SDCL 49-34A-66 by reason of which Respondent ought to be required by the order of this commission to pay

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to the Applicant a civil penalty in the amount of \$1,000 for each violation.

XVIII

Applicant is, and at all times has been ready, willing and able to cooperate with Respondent in determining the sum to which it was or is entitled on transferring service rights within the three annexed areas from Respondent to Applicant and to pay said amount to Respondent.

XIX

Applicant has expended and will continue to be obligated to expend very extensive amounts of the skill, time and energies of its officers and employees in the planning, development, construction and installation of municipal improvements and infrastructure in the three above mentioned annexed areas and in those matters has expended in excess of \$1,645,912.00 and will be obligated to expend an additional sum of at least \$660,000.00 in completing its development of these three annexed areas.

XX

Applicant depends entirely on revenues from its electric utility service in the construction, maintenance and operation of its electric utility properties and electric service department and depends in substantial measure on revenues from that department for the financing of all planning, development, construction and installation of its improvements and infrastructure installed and constructed in said annexed areas; and by reason of these facts it is of great importance to the Applicant that it be granted leave to provide electric services to all consumers and potential consumers within said three annexed areas and to receive the revenues from said services beginning at earliest possible time it is by law authorized to serve the areas.

XXI

Providing for the assignment of service areas to electric utilities and granting them the exclusive right to provide electric service at retail within assigned areas is a part of the regulatory scheme uniformly applicable to all members of the class defined as "electric utility" and is a function of this Commission to be performed and administered pursuant to South Dakota Statute; and this Applicant believes it is now entitled to an order of the Commission ordering and providing:

1. That the Respondent be required to pay to the Applicant the sum of \$1,000 for each of its

violations of SDCL 49-34A-52 and 49-34A-66, each day of its delay being a separate offense.

2. That the Applicant immediately be assigned the exclusive right to provide electric services to all electric energy consumers within each of the three above described areas annexed to the City of Vermillion.

3. That the Applicant be determined to have been entitled to the assignment above requested retroactive to that date following October 30, 1996 when the Commission finds that the amount to which Respondent was entitled could have been determined if Respondent had acted with reasonable promptness in response to Applicant's offer, and to have all revenues from that date hence.

4. That subsequent to the relief above requested, the Commission proceed to determine that amount to which Respondent is entitled.

5. For such other and further relief as the Commission may deem reasonable and just.

Dated at Vermillion, South Dakota this 10th day of December, 1997.

THE CITY OF VERMILLION,
a municipal corporation

BY: William J. Radigan

William J. Radigan, Mayor
Municipal Building
25 Center Street
Vermillion, SD 57069
(605) 677-7056

STATE OF SOUTH DAKOTA)
 :SS
COUNTY OF CLAY)

William J. Radigan, being first duly sworn on his oath deposes and says that he is the duly elected, qualified and acting mayor of the City of Vermillion, a municipal corporation, named as applicant in the above and foregoing application and that he has read the same and knows the content thereof except as to those matters stated on

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information and belief, and as to those matters he believes
it to be true.

William J. Radigan
William J. Radigan

Subscribed and sworn to before me this 30th day of
December, 1992.

W. Carter Hark
Notary Public

(SEAL)

My Commission Expires: Dec 11, 1998

0141:26.91

THE PUBLIC UTILITIES COMMISSION
OF THE
STATE OF SOUTH DAKOTA

THE CITY OF VERMILLION,	)	
a municipal corporation,	)	
	)	
Applicant,	)	
	)	
vs.	)	MOTION FOR ORDER FIXING
	)	CIVIL PENALTY AND
CLAY-UNION ELECTRIC COOP.,	)	ASSIGNING ELECTRIC UTILITY
INCORPORATED, a corporation,	)	SERVICE RIGHTS
	)	
Respondent.	)	

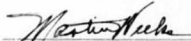
Applicant City of Vermillion moves the Commission for an order granting to it the following relief:

- 1 Determining that the Respondent has refused to "act" with respect to determining the cash consideration to be paid by the Applicant with regard to service rights in any of the three annexed areas which are the subject of this proceeding, that the Respondent stands in defiance of SD'L 49-34A-52 and 49-34A-66 in each such case, and assessing in favor of the Applicant a civil penalty in the amount of \$1,000.00 for each violation in each such case
- 2 Assigning, without further delay, the exclusive right to provide electric services to all electric energy consumers within each of the three areas annexed to the City of Vermillion which are the subject of this proceeding
- 3 Determining that the Applicant has been entitled to the territorial assignments hereinabove mentioned and to the revenues generated from electric service therein since October 30, 1997.
- 4 Ordering and directing the Respondent to answer immediately and fully the Applicant's Interrogatories and to produce for inspection and copying the several documents requested
- 5 Awarding Applicant such other and further relief as the Commission may deem reasonable and just

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This Motion is made and based on the annexed Affidavit of William J. Radigan,
Mayor of the City of Vermillion and on all the pleadings, documents, records and files in
this action

Dated at Vermillion, South Dakota this 7th day of January, 1998.



Martin Weeks, City Attorney
Attorney for the Applicant
BOGUE, WEEKS, BILLINGS & COLLIER
P.O. Box 435
Vermillion, SD 57069-0435
(605) 624-2619

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THE PUBLIC UTILITIES COMMISSION
OF THE
STATE OF SOUTH DAKOTA

THE CITY OF VERMILLION,)
a municipal corporation,)

Applicant,)

vs.)

ORDER TO SHOW CAUSE

CLAY-UNION ELECTRIC COOP.,)
INCORPORATED, a corporation,)

Respondent.)

The Public Utilities Commission having considered the attached Affidavit and Motion of the City of Vermillion, a municipal corporation, Applicant in the above entitled proceeding and having considered all the documents filed herein, including the Affidavit of William J. Radigan, Mayor of said City, and the Motion of Martin Weeks, City Attorney, for the relief mentioned in said Affidavit,

NOW, THEREFORE, it is hereby ORDERED that the Respondent, Clay-Union Electric Cooperative, a corporation, be and hereby is required to show cause before the Commission : the office of the South Dakota Utilities Commission in the State Capital Building located at 700 Governors Drive in the City of Pierre, South Dakota on the _____ day of _____, 1998, at _____ o'clock ____ M. why the relief prayed for in said Motion should not be granted

It is further ORDERED that a copy of the Affidavit of William J. Radigan, a copy of this Order to Show Cause, a copy of the City's Motion, and a copy of the City's supporting Memorandum be served on John Gors, attorney for the Respondent at his office located at 10 Austin Avenue in the City of Vermillion, South Dakota 57069 at least 20 days before the time fixed for showing cause and that any response thereto by the Respondent be served upon Martin Weeks, attorney for the Applicant, at least 5 days before that time

Dated this _____ day of _____, 1998

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

ATTEST:

BY: _____

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THE PUBLIC UTILITIES COMMISSION
OF THE
STATE OF SOUTH DAKOTA

THE CITY OF VERMILION,)
a municipal corporation.)

Applicant,)

vs.)

CLAY-UNION ELECTRIC COOP.,)
INCORPORATED, a corporation.)

Respondent.)

MEMORANDUM OF AUTHORITIES
IN SUPPORT OF APPLICANT'S
MOTION TO SHOW CAUSE

NATURE OF THIS PROCEEDING

This is a proceeding before this Commission on the application of the City of Vermillion for the determination of the cash sum which the City of Vermillion is obligated to pay to the Respondent, Clay-Union Electric Corp for the assignment of its utility rights and property located within three separate areas recently annexed to the City of Vermillion, pursuant to SDCL 49-34A-49 to 49-34A-53 1, inclusive.

JURISDICTION

Jurisdiction to determine the value of utility properties assigned pursuant to SDCL 49-34A-49, et seq is specifically granted to the South Dakota Public Utilities Commission SDCL 49-34A-42 states in part, "The Commission shall have the jurisdiction to enforce the assigned service areas established by Sections 49-34A-42 to 49-34A-44, inclusive, and 49-34A-48 to 49-34A-59, inclusive, and SDCL 49-34A-51 authorizes the Commission to determine the amount of the payment in accordance with the provisions of Section 49-34A-50."

FACTS

The Applicant, City of Vermillion, commenced this proceeding by filing its application with the Commission on the 20th day of October, 1997. On or prior to that date, the City's application was filed with the Commission, and a copy of the application was served on the Respondent as appears from the Sheriff's Return of Service filed herein. No response was made or filed by the Respondent, and on the 14th day of November, the Applicant made and filed its Interrogatories (First Set) and its Request for the Production of Documents, both requesting the Respondent to produce information relevant to a determination of the value of the properties and rights in question. Respondent has not answered any of the questions propounded to it in the Interrogatories.

and has not produced any of the documents requested in its Request for Production of Documents. Instead, it has declined to answer the Interrogatories and refused to present for copying or otherwise, any of the requested documents bearing on the question of value. Instead, Respondent has objected to the relevancy of the Interrogatories and has proposed that the matter is not properly before this Commission. Among other things, Respondent states, "Respondent declines to sell their facilities and service territory at any price."

A more detailed statement of the facts based on which Applicant's Motion for Order to Show Cause is set forth in the Affidavit of William J. Radigan, Mayor of the City of Vermillion. The Affidavit is filed herein and incorporated as a part of this fact statement by reference.

ISSUES

The sole issue before the Commission at this time is why the Applicant should not be entitled to an Order granting it relief as follows:

1. Determining that the Respondent has refused to "act" with respect to determining the cash consideration to be paid by the Applicant with regard to service rights in any of the three annexed areas which are the subject of this proceeding, that the Respondent stands in defiance of SDCL 49-34A-52 and 49-34A-66 in each such case, and assessing in favor of the Applicant a civil penalty in the amount of \$1,000.00 for each violation in each such case.
2. Assigning, without further delay, the exclusive right to provide electric services to all electric energy consumers within each of the three areas annexed to the City of Vermillion which are the subject of this proceeding.
3. Determining that the Applicant has been entitled to the territorial assignments hereinabove mentioned and to the revenues generated from electric service therein since October 30, 1997.
4. Ordering and directing the Respondent to immediately answer fully the Applicant's Interrogatories and to produce for inspection and copying the several documents requested.
5. Awarding Applicant such other and further relief as the Commission may deem reasonable and just.

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MEMORANDUM OF AUTHORITIES

Statutory Enactments

In 1975 the South Dakota Legislature enacted Chapter 283 of the 1975 Session Laws. This enactment is a broad statutory scheme for regulating electric and gas utilities, as the name of the Act implies. The purpose of the Act is stated to be, "An Act to amend SDCL 6-12-6, 9-35-1 and subdivision (3) of SDCL 47-21-1, and to repeal SDCL 49-41-1 to 49-41-33, inclusive, to regulate the retail rates charged by public utilities furnishing electric service or natural, manufactured or mixed gas, to establish geographic service areas for electric utilities, and to prescribe penalties for the violations of the provisions thereof" (Emphasis Supplied)

The 1975 Session Law, Chapter 283 is now SDCL 49-34A. SDCL 49-34A-42 granted each electric utility the exclusive right to provide electric service at retail at each and every location where it is serving a customer as of March 21, 1975 and to future customers in its assigned area. The Legislature avoided the constitutional pitfall of granting irrevocable franchises (See SD Constitution, Article VI, Section 12) by granting to this body the authority to make adjustments in service areas. Among the adjustments provided for in the enactment, was a grant of authority to municipal corporations to purchase any electrical utility properties and service rights within the annexed areas owned by any electric utility and jurisdiction in this Commission to determine the value of the assignment of the area when the parties are unable to agree. (See SDCL 49-34A-49.) Under t. at Section, a municipality which owns and operates an electric utility has the option to serve all customers within an annexed area provided it shall notify the utility previously serving the annexed area of its decision. The City of Vermillion elected to serve the customers in the three recently annexed areas described in its Application filed herein. The City, within one year following annexation of the areas notified in writing, Clay-Union Electric Corp. of its decision to serve each of the territories and agreed to pay to Clay-Union a cash consideration calculated in accordance with the provisions of SDCL 49-34A-50. Defying the mandatory provisions of SDCL 49-34A-52, Clay-Union Electric Corp. has failed and refused to proceed to take any of that action which is compulsory under SDCL 49-34A-50 to 49-34A-53. Respondent's defiance of the statute has brought the City to make and file its Application for Determination by this Commission of the price to be paid for the assigned area, all as required by SDCL 49-34A-51.

Case Authorities

The Respondent did not answer Plaintiff's Application filed herein. This being so, the factual allegations of the Application must be taken as true. In an effort to bring to light those facts necessary to determine the cash consideration to be paid to the Respondent, the Applicant prepared and served upon the Respondent its Interrogatories (First Set) and its Request for the Production of Documents (First Set). The only response to the Interrogatories and the Request for Production of Documents is Respondent's refusal to answer the Interrogatories or produce documents, coupled with

Respondent's statement at Paragraph IV that it declines to sell its facilities and service territory at any price. Counsel then mentions that Respondent believes that the controlling statutes are unconstitutional and pre-empted by the Federal Supremacy Clause and concludes with an offer to furnish all relevant information in the event that the South Dakota Statutes are held to be constitutional.

Respondent overlooks the fact that the Statutes controlling in this case have already been held to be constitutional. A public utility does not have a property interest in its service territory. Matter of Certain Territorial Electric Boundaries, etc. (SD 1979) 281 N.W.2d 65, Matter of Certain Territorial Electric Boundaries, etc. (SD 1975) 281 N.W.2d 72. Both cases originated in the Public Utilities Commission. Both were ultimately appealed to the South Dakota Supreme Court and on Page 70 of the report of the Court's decision in the first of said two cases, the Supreme Court said:

"We next turn to the question of whether SDCL 49-34A violates that part of the South Dakota Constitution, Article VI, Section 12, which reads: "No ... law making any irrevocable right of privilege, franchise, or community shall be passed."

The statute does not explicitly make the franchise irrevocable. SDCL 29-34A-42 does, however, provide for "exclusive service areas." This statute must be read together with others.

SDCL 49-34A-49 through 49-34A-55, permits a municipality - owned system to purchase facilities of another electric utility operating within the municipal boundaries.

Thus, it will be seen that SDCL 49-34A-49 through 49-34A-55, far from being unconstitutional, are elements that prevent the entire Chapter SDCL 49-34A from being unconstitutional. Utility service areas are privileges rather than property rights and by SD Constitution Article VI, Section 12 may not be established by irrevocable grants.

The South Dakota Court went further in the second of the two cited cases. On Page 75 of its opinion, the Court said:

We now reaffirm that franchise rights conferred upon a utility by the State are subject to control by the Legislature. Citing cases. The rights granted N.E.C. under SDCL 49-41-7 and 8 are not irrevocable franchises.

On Page 76 the court said:

We conclude that designation of boundary lines, as part of an allocation system is a regulatory procedure that utility companies accept as part of the franchise, and is not within the purview of constitutional provisions forbidding the taking of private property without compensation. Chicago and N.W. Ry. Company vs. Dougherty, 39 SD 147, 163 N.W. 715 (1917).

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In further support of Applicant's position, we cite City of Milbank, et. al. vs. Dakota Central Telephone Company, et. al., (SD 1916) 159 N.W. 99, where the Court considered the relationship between regulatory control over a public utility and the exercise of the power of eminent domain, and held that such controls constitute a mere regulation of a public service corporation, if not under the implied power resulting from the nature of the franchise enjoyed by the Corporation, then under the police powers of the State.

Respondent next contends, without any facts or case law to support it, that the South Dakota Statutes on which the Applicant relies are pre-empted by the Federal Supremacy Clause in that the transfer of territory by the Applicant would impair the Respondent's ability to pay their federal loans and frustrate the federal purpose of a federal statutory scheme. The Rural Electrification Act (REA) found at 7 U.S.C. 901. That the transfer of territorial rights requested in this case would impair Respondent's ability to repay its federal loan and serve the remainder of its customers may not rest upon a presumption, but must be proved. The State of Minnesota does not have a statute similar to South Dakota's 1975 SL 283, but employs condemnation procedure to reach similar results in situations like that presented in this case. In that respect, the laws of the two states are different. The decision of the Minnesota Supreme Court in Rochester vs. People's Co-op Power Association, 505 N.W. 2d, 621 (MN 1993) is directly in point with regards to the Federal Supremacy question, however. At Page 626 of that opinion, the Court said:

Similarly, here, we conclude a municipality's condemnation of an REA financed cooperative's property is authorized unless condemnation so seriously compromises the REA's interest, including the ability of the cooperative to pay its loans, as to be implicitly pre-empted. In the present case, the United States has not demonstrated that the City's condemnation of peoples' utility rights will compromise the REA's interests to a greater degree than any other condemnation.

See also City of Morgan City vs. South L.A. Elect. Co-op., 49 F.3d 1074 (5th Cir., 1995), where the matter of pre-emption was fully considered and where the evidence necessary in making a decision on the point was fully considered.

In Stillwell, Okl. vs. Ozarks Rural Elect. Co-op Corp., 79 F.3d 1038 (10th Cir., 1996), the Court considered the pre-emption question and made a very interesting observation:

More generally, Ozarks urges that these cases support its position that Stillwell is precluded from "skimming the cream" away from Ozarks' customer base. Essentially, this is to argue that the REA Act contemplates a system where rural customers are subsidized by relying on revenues

generated from urban customers. We find no such intent either express or implied in the language of the R.E. Act. The R.E. Act subsidizes rural communities by offering low interest financing, not by making available to them more lucrative markets for electric power. Citing Waubash Valley, 988 F.2d at 1483-84.

CONCLUSION

SDCL 49-34A-49 codified a legislative scheme for orderly transfer of utility service areas in territories annexed to municipalities. Once initiated by action of the municipality, the procedure to be followed is mandatory, and when properly followed, it is simple and direct. The City of Vermillion is entitled to serve in its annexed territories without unnecessary delay. Respondent ought not to be permitted to profit by its delay, and the Commission should forthwith shift service rights to the City and then determine the cash consideration to be paid when the Respondent is ready and willing to comply with the Act. Further, the Commission should impose the civil penalty authorized under SDCL 49-34A-66 with respect to each of the three areas by way of compensating the City for its unnecessary and additional expenses and loss of revenues.

Dated at Vermillion, South Dakota, this 7th day of January, 1998.

Respectfully submitted,



Martin Weeks, City Attorney
Attorney for the Applicant
BOGUE, WEEKS, BILLINGS & COLLIER
P.O. Box 435
Vermillion, SD 57069-0435
(605) 624-2619

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THE PUBLIC UTILITIES COMMISSION
OF THE
STATE OF SOUTH DAKOTA

THE CITY OF VERMILLION.)
a municipal corporation.)
)
Applicant.)

vs.)

CERTIFICATE OF SERVICE

CLAY-UNION ELECTRIC COOP.)
INCORPORATED, a corporation.)
)
Respondent.)

Service of the following documents:

- 1) Letter from Martin Weeks, Attorney for Applicant,
dated January 7, 1998 to PUC;
- 2) Affidavit in Support of Order to Show Cause;
- 3) Motion for Order;
- 4) Order to Show Cause; and
- 5) Memorandum of Authorities in Support of
Applicant's Motion to Show Cause.

were served upon the Respondent, Clay-Union Electric Coop.,
Inc., by mailing true and correct copies thereof on January
7, 1998, to the attorney for said Respondent at his last
known post office address, viz:

Mr. John Gors
Attorney at Law
P.O. Box 396
10 Austin Avenue
Vermillion, SD 57069

by depositing said copies in the United States Mail, with
first class postage thereon prepaid, at Vermillion, South
Dakota.

BOGUE, WEEKS, BILLINGS & COLLIER

BY:

Martin Weeks
Martin Weeks
Attorneys for the Applicant
P.O. Box 435
Vermillion, SD 57069-0435
(605) 624-2619

0141:26:101

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE APPLICATION OF)	AMENDED ORDER TO
THE CITY OF VERMILLION FOR)	SHOW CAUSE
DETERMINATION OF PURCHASE PRICE OF)	
ELECTRIC FACILITIES IN ANNEXED AREAS)	EL97-020

On October 20, 1997, the Public Utilities Commission (Commission) received an Application for Determination of Purchase Price of Electric Facilities in Annexed Areas (Application) from the City of Vermillion (Vermillion). In its Application, Vermillion stated that it annexed some of Clay-Union Electric Corporation's (Clay-Union Electric) service area during the time period of November 20, 1995, through April 12, 1996. On October 21, 1996, Vermillion adopted a resolution to purchase the service rights and electric utility properties from Clay-Union Electric pursuant to SDCL 49-34A-49. On October 30, 1996, Vermillion sent to Clay-Union Electric a Notice of Intent to Purchase Electric Utility Properties in Annexed Areas, with the amount to be calculated in accordance with SDCL 49-34A-50. On May 29, 1997, Clay-Union Electric informed Vermillion that it would not consent to the conditions contained in the Notice of Intent to Purchase. In its Application, Vermillion requests that the Commission determine the amount of the payment pursuant to 49-34A-50.

According to the Application, the annexed areas that are currently served by Clay-Union Electric are as follows:

The North 220 feet of the West 298 feet of the East 588 feet of the East Half of the Southeast Quarter (E $\frac{1}{2}$ SE $\frac{1}{4}$) of Section 12, Township 92, Range 52, West of the 5th P.M.

Beginning at the Southwest section corner of Sec. 17-92-51 thence North 2652 feet on the center line of Crawford Road to the West $\frac{1}{4}$ corner of Sec. 17-92-51 thence East 331 feet, thence South 548.86 feet, thence West 153 feet, thence South 777.57 feet, thence East 21.83 feet, thence South 1126.43 feet, thence East 2452 feet, thence South 200 feet to the South $\frac{1}{4}$ corner of Sec. 17-92-51 thence West 2169 feet on the center line of Main Street thence South 339 feet, thence West 285 feet, thence North 256 feet, thence East 68 feet, thence South 100 feet, thence East 126 feet, thence North 183 feet to center line of Main Street thence West 392 feet to point of beginning, all in Section 17-92-51 and 20-92-51, Clay County, South Dakota.

The West $\frac{1}{2}$ of the NW $\frac{1}{4}$ of Section 13, Township 92 North, Range 52 West of the 5th P.M., Clay County, South Dakota, with the exception of the South 660 feet of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ and Lot H-1 of the West $\frac{1}{2}$ of the SW $\frac{1}{4}$.

On January 7, 1998, Vermillion filed an Affidavit in Support of Order to Show Cause, a Motion for Order, an Order to Show Cause, and a Memorandum of Authorities in Support of Motion to Show Cause. Vermillion requested that the Commission issue an Order to Show Cause why the following relief should not be granted: (1) a civil penalty assessed against Clay-Union Electric in the amount of \$1000.00 for each violation of SDCL 49-34A-52 and 49-34A-66; (2) the assignment to Vermillion of the exclusive right to provide electric services to all electric energy consumers within each of the three areas annexed by Vermillion; (3) a finding that Vermillion is entitled to the territorial assignments and to the revenues generated from electric service therein since October 30, 1997; (4) ordering Clay-Union Electric to answer Vermillion's interrogatories and produce documents as requested for inspection and copying; and (5) awarding Vermillion other and further relief as the Commission may find is just and reasonable.

In a letter dated February 17, 1998, Clay-Union Electric affirmed that it has refused to transfer certain parts of its service territory to Vermillion. Clay-Union Electric further stated that it believed that two issues were presented by the Application that could not be answered by the Commission. The first issue is whether SDCL 49-34A is in violation of the South Dakota Constitution for failure to provide just compensation for the annexed property. The second issue is whether SDCL 49-34A is preempted by the federal legislation authorizing and funding the Rural Utilities Service. Clay-Union Electric stated that it would pursue these issues in the proper forum.

At its February 18, 1998, meeting, the Commission considered this matter. The Commission listened to the arguments made by both parties and took the matter under advisement. At its February 24, 1998, meeting, the Commission again considered this matter. The Commission has jurisdiction over this matter pursuant to SDCL Chapter 1-26, SDCL 49-34A-42 to 49-34A-52, 49-34A-66 to 49-34A-69, and ARSD 20 10 01 45. The Commission voted unanimously to issue an Order to Show Cause.

PLEASE TAKE NOTICE that a hearing shall be held at 1:00 p.m., April 16, 1998, in Room 412, State Capitol Building, Pierre, South Dakota. At the hearing, Clay-Union Electric shall show cause why the Commission should not take any of the following actions: (1) pursuant to SDCL 49-34A-66, assess a civil penalty against Clay-Union in an amount of not less than one hundred dollars nor more than one thousand dollars for each violation of SDCL 49-34A-52 and 49-34A-66; (2) assign to Vermillion the exclusive right to provide electric services to all electric energy consumers within each of the three areas annexed by Vermillion (as listed above) which are currently served by Clay-Union Electric; (3) find that Vermillion is entitled to the territorial assignments and to the revenues generated from electric service in the annexed areas since October 30, 1997; and (4) order Clay-Union Electric to answer Vermillion's interrogatories and produce documents as requested for inspection and copying.

0141-26-183

The hearing will be conducted pursuant to SDCL Chapter 1-26. All parties have the right to attend and represent themselves or be represented by an attorney. However, such rights and other due process rights shall be forfeited if not exercised at the hearing. If you or your representative fail to appear at the time and place set for the hearing, the decision of whether or not the relief is granted will be based on arguments and authorities presented at the hearing. A final decision may be issued by default pursuant to SDCL 1-26-20.

The Commission, after examining the arguments and authorities presented by the parties, shall decide whether any of the above listed actions shall be ordered by the Commission. A Final Decision may be appealed by the parties to the Circuit Court and the South Dakota Supreme Court as provided by law.

It is therefore

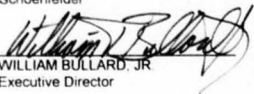
ORDERED, that a hearing on this Order to Show Cause shall be held on April 16, 1998, beginning at 1:00 p.m., in Room 412, State Capitol Building, Pierre, South Dakota, and it is

FURTHER ORDERED, that the documents filed by Vermillion in support of its request for an Order to Show Cause are hereby attached to this Order.

Dated at Pierre, South Dakota, this 13th day of March, 1998.

CERTIFICATE OF SERVICE The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon. By <u>William Bullard, Jr.</u> Date <u>3/13/98</u> (OFFICIAL SEAL)
--

BY ORDER OF THE COMMISSION
Commissioners Burg, Nelson and
Schoenfelder


WILLIAM BULLARD, JR.
Executive Director



South Dakota Public Utilities Commission

State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070



March 19, 1998

Capitol Office
Telephone (605)773-3201
FAX (605)773-3809

Transportation/
Warehouses Division
Telephone (605)773-5280
FAX (605)773-3225

Consumer Hotline
1-800-332-1782

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bill@puc.state.sd.us

♦
Jim Burg
Chairman
Pam Nelson
Vice-Chairman
Laska Schoenfelder
Commissioner

William Ballard Jr.
Executive Director

Edward R. Anderson
Harlan Best
Martin C. Betsmann
Charlie Boley
Sue Cichos
Karen E. Cramer
Marlette Fischbach
Sharon Fugitt
Lewis Hammond
Katie Hartford
Lore Healy
Carmen Houck
Dave Jacobson
Bob Knadlic
Debra Knuth
Jeffrey P. Locantore
Terry Norman
Gregory A. Rabin
Teresa Stangor
Steven M. Wegman
Rolayne Ailts Wiest

Mr. Martin Weeks
City Attorney
City of Vermillion
P. O. Box 435
Vermillion, SD 57069-0435

Re: Clay-Union Electric Corporation v
City of Vermillion
Civ. 98-47 (Docket EL97-020)

Dear Mr. Weeks:

As requested, and with reference to the above captioned matter, enclosed you will find certified copies of all of the documents contained in Docket EL97-020.

Very truly yours,

Rolayne Ailts Wiest
Special Assistant Attorney General

RAW dk
Enc

DeVany & Gors

ATTORNEYS AT LAW

P.O. Box 396 • 10 Austin Street
Vermillion, South Dakota 57069

Telephone: 605-624-3295 • 605-624-2231

Fax: 605-624-6628

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APR 17 1998

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

John S. DeVany
Attorney At Law

John A. Gors
Attorney At Law

April 15, 1998

Rolayne Ailts Wiest, Esq.
Public Utilities Commission
State Capitol Building
500 E. Capitol Avenue
Pierre, SD 57501

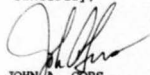
Re: City of Vermillion vs. Clay-Union Electric
EL. 97-020

Dear Rolayne:

Enclosed is the original Consent to Indefinite Continuance
which has been signed by Mr. Weeks and myself.

Thank you very much for your cooperation and assistance to
this matter.

Sincerely,



JOHN A. GORS
Attorney

JAG/ka
Enclosure

pc: Martin Weeks, Esq.

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE

STATE OF SOUTH DAKOTA

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APR 17 1998

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

THE CITY OF VERMILLION,
A Municipal Corporation,
Applicant,

EL. 97-020

vs.

CONSENT TO INDEFINITE
CONTINUANCE

CLAY-UNION ELECTRIC COOPERATIVE,
A Corporation,
Respondent

The above named parties, by and through their attorneys
of record do hereby consent and agree as follows:

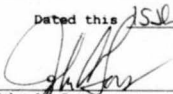
1.

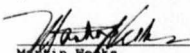
The parties consent and agree that the show cause
hearing scheduled before the Public Utilities Commission on
April 16, 1998, at 1:00 p.m. shall be continued
indefinitely.

2.

The parties request that the Public Utilities
Commission continue this matter until further action is
requested by the parties or either of them.

Dated this 15th day of April, 1998.


John A. Gors
Attorney for Respondent


Marvin Weeks
Attorney for Applicant

811-226-1030

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE APPLICATION OF) ORDER FOR CONTINUANCE
THE CITY OF VERMILION FOR)
DETERMINATION OF PURCHASE PRICE OF) EL97-020
ELECTRIC FACILITIES IN ANNEXED AREAS)

On October 20, 1997, the Public Utilities Commission (Commission) received an Application for Determination of Purchase Price of Electric Facilities in Annexed Areas (Application) from the City of Vermillion (Vermillion). In its Application, Vermillion stated that it annexed some of Clay-Union Electric Corporation's (Clay-Union Electric) service area during the time period of November 20, 1995, through April 12, 1996. On October 21, 1996, Vermillion adopted a resolution to purchase the service rights and electric utility properties from Clay-Union Electric pursuant to SDCL 49-34A-49. On October 30, 1996, Vermillion sent to Clay-Union Electric a Notice of Intent to Purchase Electric Utility Properties in Annexed Areas, with the amount to be calculated in accordance with SDCL 49-34A-50. On May 29, 1997, Clay-Union Electric informed Vermillion that it would not consent to the conditions contained in the Notice of Intent to Purchase. In its Application, Vermillion requests that the Commission determine the amount of the payment pursuant to 49-34A-50.

According to the Application, the annexed areas that are currently served by Clay-Union Electric are as follows:

The North 220 feet of the West 298 feet of the East 588 feet of the East Half of the Southeast Quarter (E $\frac{1}{2}$ SE $\frac{1}{4}$) of Section 12, Township 92, Range 52, West of the 5th P.M.

Beginning at the Southwest section corner of Sec. 17-92-51 thence North 2652 feet on the center line of Crawford Road to the West $\frac{1}{4}$ corner of Sec. 17-92-51 thence East 331 feet, thence South 548.86 feet, thence West 153 feet, thence South 777.57 feet, thence East 21.83 feet, thence South 1126.43 feet, thence East 2452 feet, thence South 200 feet to the South $\frac{1}{4}$ corner of Sec. 17-92-51 thence West 2169 feet on the center line of Main Street thence South 339 feet, thence West 285 feet, thence North 256 feet, thence East 68 feet, thence South 100 feet, thence East 126 feet, thence North 183 feet to center line of Main Street thence West 392 feet to point of beginning, all in Section 17-92-51 and 20-92-51, Clay County, South Dakota.

The West $\frac{1}{2}$ of the NW $\frac{1}{4}$ of Section 13, Township 92 North, Range 52 West of the 5th P.M. Clay County, South Dakota, with the exception of the South 660 feet of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ and Lot H-1 of the West $\frac{1}{2}$ of the SW $\frac{1}{4}$.

On January 7, 1998, Vermillion filed an Affidavit in Support of Order to Show Cause, a Motion for Order, an Order to Show Cause, and a Memorandum of Authorities in Support of Motion to Show Cause. Vermillion requested that the Commission issue an Order to Show Cause why the following relief should not be granted: (1) a civil penalty assessed against Clay-Union Electric in the amount of \$1000.00 for each violation of SDCL 49-34A-52 and 49-34A-66, (2) the assignment to Vermillion of the exclusive right to provide electric services to all electric energy consumers within each of the three areas annexed by Vermillion, (3) a finding that Vermillion is entitled to the territorial assignments and to the revenues generated from electric service therein since October 30, 1997, (4) ordering Clay-Union Electric to answer Vermillion's interrogatories and produce documents as

requested for inspection and copying, and (5) awarding Vermillion other and further relief as the Commission may find is just and reasonable.

In a letter dated February 17, 1998, Clay-Union Electric affirmed that it has refused to transfer certain parts of its service territory to Vermillion. Clay-Union Electric further stated that it believed that two issues were presented by the Application that could not be answered by the Commission. The first issue is whether SDCL 49-34A is in violation of the South Dakota Constitution for failure to provide just compensation for the annexed property. The second issue is whether SDCL 49-34A is preempted by the federal legislation authorizing and funding the Rural Utilities Service. Clay-Union Electric stated that it would pursue these issues in the proper forum.

At its February 18, 1998, meeting, the Commission considered this matter. The Commission listened to the arguments made by both parties and took the matter under advisement. At its February 24, 1998, meeting, the Commission again considered this matter. The Commission has jurisdiction over this matter pursuant to SDCL Chapter 1-26, SDCL 49-34A-42 to 49-34A-52, 49-34A-66 to 49-34A-69, and ARSD 20 10 01.45. The Commission voted unanimously to issue an Order to Show Cause.

On March 11, 1998, Clay-Union Electric filed a Motion for Order to Stay Proceedings of the Public Utilities Commission and an Action for Declaratory Judgment in the First Judicial Circuit. Both these documents were amended on March 24, 1998. A hearing was held on the motion for a stay on March 24, 1998. The Court issued its Memorandum Opinion on April 7, 1998, denying the stay. On April 15, 1998, Vermillion and Clay-Union Electric orally agreed to a Consent to Indefinite Continuance which was filed with the Commission on April 17, 1998. Based upon the above filing, the hearing in this matter scheduled for April 16, 1998, shall be continued indefinitely.

Dated at Pierre, South Dakota, this 29 day of April, 1998.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: William T. Bullard, Jr.

Date: 4/29/98

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION
Commissioners Burg, Nelson and
Schoenfelder

William T. Bullard, Jr.
WILLIAM BULLARD, JR.
Executive Director

V City of
VERMILLION

25 CENTER STREET
VERMILLION, SOUTH DAKOTA 57068

PHONE: (605) 624-5841

RECEIVED

JUL 6 2 1998

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION



June 30, 1998

Public Utilities Commission
State Capitol Building
500 East Capitol Avenue
Pierre, SD 57501-5070

RE: City of Vermillion v. Clay-Union Electric Corporation

Gentlemen:

Enclosed herewith please find an original signed copy of a Stipulation and Agreement between the City of Vermillion and Clay-Union Electric Corporation settling some of the differences between the parties in the above-entitled matter. As stated in Paragraph 5 on Page 5 of the Stipulation, the agreement is intended for use pursuant to SDCL 49-34A-55 in transferring the service rights from Clay-Union to the City and to establish a basis on which the Public Utilities Commission may enter an Order accordingly. If the agreement meets your approval, will you please prepare and execute the necessary Order.

I am filing a duplicate original of this agreement with the Clay County Clerk of Courts

Yours truly,
CITY OF VERMILLION


Martin Weber
City Attorney

MW/sd

Encl

pc John Gors
Jeff Pederson, City Manager

014126110

THE PUBLIC UTILITIES COMMISSION
OF THE
STATE OF SOUTH DAKOTA

RECEIVED

JUL 27 1998

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

THE CITY OF VERMILLION,)
a municipal corporation,)
)
Applicant,)
)
vs.)
)
CLAY-UNION ELECTRIC,)
CORPORATION, a corporation,)
)
Respondent.)

AND

STATE OF SOUTH DAKOTA)
)SS
COUNTY OF CLAY)

IN CIRCUIT COURT

FIRST JUDICIAL CIRCUIT

CLAY-UNION ELECTRIC CORPORATION,)
A Corporation,)
)
Plaintiff,)
)
vs.)
)
THE CITY OF VERMILLION,)
A Municipal Corporation,)
)
Defendant.)

STIPULATION
AND
AGREEMENT

WHEREAS, on the dates hereinafter mentioned respectively, the City of Vermillion ("City") has annexed and extended its boundaries to include the three following described territories previously within the electric service area of the Respondent and Plaintiff, Clay Union Electric Corporation ("Clay-Union"), viz:

Territory No 1 - Annexed on November 20, 1995:

The East Half (E 1/2) of the Southeast Quarter (SE 1/4) of Section Twelve (12), Township Ninety-two (92), Range Fifty-two (52) West of the 5TH P.M., except the West 732 feet of the North 1,475 feet thereof, Clay County, South Dakota

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Territory No. 2 - Annexed on March 11, 1996

Beginning at the Southwest section corner of Sec. 17-92-51 thence North 2652 feet on the center line of Crawford Road to the West 1/4 corner of Sec. 17-92-51 thence East 331 feet, thence South 548.86 feet, thence West 153 feet, thence South 777.57 feet, thence East 21.83 feet, thence South 1126.43 feet, thence East 2452 feet, thence South 200 feet to the South 1/4 corner of Sec. 17-92-51 thence West 2169 feet on the center line of Main Street thence South 339 feet, thence West 285 feet, thence North 256 feet, thence East 68 feet, thence South 100 feet, thence East 126 feet, thence North 183 feet to center line of Main Street thence West 392 feet to point of beginning, all in Section 17-92-51 and 20-92-51, Clay County, South Dakota

Territory No. 3 - Annexed on April 12, 1996

The West 1/2 of the NW 1/4 of Section 13, Township 92 North, Range 52 West of the 5TH P.M., Clay County, South Dakota, with the following exceptions: The South 660' of the SW 1/4 of the NW 1/4, and Lot H-1 of the West 1/2 of the NW 1/4, and the East 1/2 of the NE 1/4 of Section 14, Township 92 North, Range 52 West of the 5TH P.M., Clay County, South Dakota, with the following exceptions: The South 660' of the SE 1/4 of the NE 1/4, Lot H-2 of the East 1/2 of the NE 1/4

and thereafter on the 21st day of October, 1996, acting pursuant to SDCL 49-34A-49 et seq., notified Clay-Union that it intended to exercise and perform electric utility service rights and functions in each of said annexed areas.

WHEREAS, until now, the parties have been unable to agree as to the facts and law relating to a transfer of electrical utility service rights pursuant to SDCL 49-34A-48, et seq., and City filed its application with the Public Utilities Commission ("Commission") to determine the amount of the payment in accordance with the provisions of said Section 49-34A-50,

WHEREAS, in the course of proceedings before the Commission and before it heard evidence on the merits of the proceeding, Clay-Union commenced the above entitled action for declaratory relief wherein it prayed for judgment of the Court declaring that the statutory procedure for determining the amount to be paid by City to Clay-Union and vesting authority in the Commission to make that determination in the manner provided by SDCL 49-34A-50 is unconstitutional, and in and as a part of said action for declaratory relief, filed its motion for a stay of all said proceedings pending before the Commission,

2000-01-14-08

WHEREAS the Court denied Clay-Union's motion for said Order to stay the proceedings before the Commission,

AND WHEREAS the parties orally agreed to an indefinite continuance of the proceeding pending before the Commission and the Commission entered its order continuing the matter indefinitely,

NOW, THEREFORE, it is hereby stipulated by and between the parties as follows

1 From and after the 21st day of January, 1997, City shall be deemed to have the service rights and responsibilities for serving all electric energy consumers over and through its own distribution lines and facilities in and throughout each of the three annexed territories hereinabove more specifically described and shall be entitled to supply such energy at its own rates and shall be entitled to make charges to all consumers in said territories and receive and collect compensation from said consumers until such time as a final judgment of the above entitled court or an appellate court shall be made and entered declaring or otherwise holding that the statutory scheme established by SDCL 49-34A-49 to 49-34A-53 is inclusive, or such material part thereof as defeats its purpose, is unconstitutional and void

2 The City will pay to Clay-Union a cash consideration for the transfer of services and facilities and all incidental costs and losses in each of said annexed territories as follows:

(a) Territory No. 1 - The total of

(1) On the aforesaid date, for present day reproduction costs, new, of the facilities being displaced, less depreciation computed on a straight line basis, plus an amount equal to the cost on a nonbetterment basis of constructing any necessary facilities to reintegrate Clay-Union's system outside the annexed area after detaching the portion displaced, the sum of \$ 1362.33 _____

(2) For service rights, an annual amount, payable each year for a period of time commencing on the cutover date herein after established and ending on January 21, 2004, equal to the sum of twenty-five percent of the gross revenues received by the City from power sales to consumers of electric power within the annexed area during said

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year period, computed by applying Clay-Union's current rates

(b) Territory No. 2 - The total

(1) On the aforesaid date, for present day reproduction costs, new, of the facilities being displaced, less depreciation computed on a straight line basis, plus an amount equal to the cost on a nonbetterment basis of constructing any necessary facilities to reintegrate Clay-Union's system outside the annexed area after detaching the portion displaced, the sum of \$ 4414.18

(2) For service rights, an annual amount, payable each year for a period of time commencing on the cutover date herein after established and ending on January 21, 2004, equal to the sum of twenty-five percent of the gross revenues received by the City from power sales to consumers of electric power within the annexed area during said period, computed by applying Clay-Union's current rates

(c) Territory No. 3 - The total of:

(1) On the aforesaid date, for present day reproduction costs, new, of the facilities being displaced, less depreciation computed on a straight line basis, plus an amount equal to the cost on a nonbetterment basis of constructing any necessary facilities to reintegrate Clay-Union's system outside the annexed area after detaching the portion displaced, the sum of \$ 0

(2) For service rights, an annual amount, payable each year for a period of time commencing on the cutover date herein after established and ending on January 21, 2004, equal to the sum of twenty-five percent of the gross revenues received from power sales to consumers of electric power within the annexed area during said period, computed by applying Clay-Union's current rates.

3 In the event the South Dakota courts shall declare and hold that the statutory scheme established by SDCL 49-34A-49 to 49-34A-53.1

Art. 62.14.18
inclusive, or such material part thereof as is essential to its purpose, is unconstitutional and void, City will, upon the date of entry of such judgment, return said service territories to Clay-Union without further obligation or payments to be made by City to Clay-Union, and Clay-Union will refund to City all sums then previously paid by City to Clay-Union for present day reproduction cost, new, of facilities being displaced, less depreciation computed on a straight line basis, plus an amount equal to the cost on a non-betterment basis of constructing any necessary facilities to reintegrate Clay-Union's system outside annexed areas.

4 The Commission has entered its order under date of April 29, 1998 continuing indefinitely all matters scheduled before it for April 16, 1998. Without delay, Clay-Union will proceed in Circuit Court toward a final determination of the issues raised in its AMENDED ACTION FOR DECLARATORY JUDGMENT, and City will, at all times promptly respond and present its case and arguments within times fixed from time to time by the Court. Clay-Union accepts the risk of any unfavorable sua sponte ruling by the courts arising out of its not having appealed from the court's April 29, 1998 ORDER DENYING PLAINTIFF'S AMENDED MOTION FOR ORDER TO STAY PROCEEDINGS OF PUBLIC UTILITIES COMMISSION.

5 This agreement is intended for use pursuant to SDCL 49-34A-55 in now transferring service rights and other rights and property in the three above specifically described annexed territories from Clay-Union to City and, in the event the courts declare and hold that the statutory scheme established by SDCL 49-34A-49 to 49-34A-53.1 is unconstitutional and void, to again transfer service rights and other rights in said territories from City to Clay-Union, and the parties agree that the Public Utilities Commission may proceed to approve and effect such changes without further action by either party.

6 A duplicate copy of this Stipulation shall be filed by City in the office of the Public Utilities Commission and in the office of the Clerk of this Court.

7 Without delay each party shall execute this agreement and any other document necessary to give effect to the transfers of service rights contemplated herein.

8 The date for cut over (switching energy to affected customers from Clay-Union to City) shall be 30 days following Commission's approval of this agreement.

It is further understood and agreed that on June 2, 1997, the City annexed.

South 225 ft. of the West 270 ft. of the South 1/2 of the SE 1/4 of Sec. 17-92-51, Clay County, South Dakota,

and North 190 ft. of the West 240 ft. of the North 1/2 of the NE 1/4 of Sec. 20-92-51, Clay County, South Dakota, hereinafter referred to as Territory No. 4

and that on the 21st day of April, 1998, the City notified Clay-Union that it intended to exercise its statutorily conferred right to serve electrical energy consumers in said territory. All the terms and conditions of this Stipulation and Agreement shall be applicable to and controlling in the transfer of service rights from Clay-Union to the City in said Territory No. 4, provided, however, that the date from which the City shall be deemed to be entitled to the exchange of service rights in said territory shall be July 21, 1998, and all payment obligations shall be calculated on or from that date instead of January 21, 1998. All the terms and conditions of the agreement shall apply to any other annexation occurring after the date hereof and prior to a final determining of the pending litigation

Dated at Vermillion, South Dakota, this 30th day of June, 1998.

CITY OF VERMILLION,
a municipal corporation

CLAY-UNION ELECTRIC CORPORATION,
a corporation

BY William J. Radigan BY Don O'Connor
William J. Radigan, Mayor

ATTEST

ATTEST

Michael D. Carlson
Michael D. Carlson
Finance Officer

Larry Biggs
Secretary

Martin Weeks
Martin Weeks, City Attorney

John Gors
John Gors, Attorney

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE APPLICATION OF) THE CITY OF VERMILION, SOUTH DAKOTA,) FOR A DETERMINATION OF THE PURCHASE) PRICE OF ELECTRIC FACILITIES IN ANNEXED) AREAS)	ORDER APPROVING) STIPULATION AND) CLOSING DOCKET) EL97-020
--	--

On October 20, 1997, the Public Utilities Commission (Commission) received an Application for Determination of Purchase Price of Electric Facilities in Annexed Areas (Application) from the City of Vermillion (Vermillion). In its Application, Vermillion stated that it annexed some of Clay-Union Electric Corporation's (Clay-Union Electric) service area during the time period of November 20, 1995, through April 12, 1996. On October 21, 1996, Vermillion adopted a resolution to purchase the service rights and electric utility properties from Clay-Union Electric pursuant to SDCL 49-34A-49. On October 30, 1996, Vermillion sent to Clay-Union Electric a Notice of Intent to Purchase Electric Utility Properties in Annexed Areas, with the amount to be calculated in accordance with SDCL 49-34A-50. On May 29, 1997, Clay-Union Electric informed Vermillion that it would not consent to the conditions contained in the Notice of Intent to Purchase. In its Application, Vermillion requests that the Commission determine the amount of the payment pursuant to 49-34A-50.

On January 7, 1998, Vermillion filed an Affidavit in Support of Order to Show Cause, a Motion for Order, an Order to Show Cause, and a Memorandum of Authorities in Support of Motion to Show Cause. Vermillion requested that the Commission issue an Order to Show Cause why the following relief should not be granted: (1) a civil penalty assessed against Clay-Union Electric in the amount of \$1000.00 for each violation of SDCL 49-34A-52 and 49-34A-66; (2) the assignment to Vermillion of the exclusive right to provide electric services to all electric energy consumers within each of the three areas annexed by Vermillion; (3) a finding that Vermillion is entitled to the territorial assignments and to the revenues generated from electric service therein since October 30, 1997; (4) ordering Clay-Union Electric to answer Vermillion's interrogatories and produce documents as requested for inspection and copying; and (5) awarding Vermillion other and further relief as the Commission may find is just and reasonable.

In a letter dated February 17, 1998, Clay-Union Electric affirmed that it has refused to transfer certain parts of its service territory to Vermillion. Clay-Union Electric further stated that it believed that two issues were presented by the Application that could not be answered by the Commission. The first issue is whether SDCL 49-34A is in violation of the South Dakota Constitution for failure to provide just compensation for the annexed property. The second issue is whether SDCL 49-34A is preempted by the federal legislation authorizing and funding the Rural Utilities Service. Clay-Union Electric stated that it would pursue these issues in the proper forum.

At its February 18, 1998, meeting, the Commission considered this matter. The Commission listened to the arguments made by both parties and took the matter under advisement. At its February 24, 1998, meeting, the Commission again considered this matter. The Commission voted unanimously to issue an Order to Show Cause.

On March 11, 1998, Clay-Union Electric filed a Motion for Order to Stay Proceedings of the Public Utilities Commission and an Action for Declaratory Judgment in the First Judicial Circuit. Both these documents were amended on March 24, 1998. A hearing was held on the motion for a stay on March 24, 1998. The Court issued its Memorandum Opinion on April 7, 1998, denying the stay. On April 15, 1998, Vermillion and Clay-Union Electric orally agreed to a Consent to Indefinite Continuance which was filed with the Commission on April 17, 1998. Based upon the above filing, the hearing in this matter scheduled for April 16, 1998, was continued indefinitely.

On July 2, 1998, the Commission received a Stipulation and Agreement signed by the parties. According to the Stipulation and Agreement, the agreement is intended for use pursuant to SDCL 49-34A-55 in transferring the service rights from Clay-Union to the City and to establish a basis on which the Commission may enter an Order. At its regularly scheduled July 23, 1998, meeting the Commission considered whether to approve the Stipulation and Agreement. The Commission has jurisdiction over this matter pursuant to SDCL Chapter 1-26, SDCL 49-34A-42 to 49-34A-52, 49-34A-66 to 49-34A-69, and ARSD 20 10 01 45. The Commission unanimously voted to approve the Stipulation and Agreement and to close the docket. It is therefore

ORDERED that the Stipulation and Agreement has been approved. It is further

ORDERED that docket EL97-020 is hereby closed.

Dated at Pierre, South Dakota, this 5th day of August, 1998.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By Melanie Kaska

Date 8/7/98

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner