

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

IN THE MATTER OF THE APPLICATION OF)	<u>AMENDED</u> 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.

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>Alaina Kelso</u>
Date:	<u>3/13/98</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:
Commissioners Burg, Nelson and
Schoenfelder

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