

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

This contract **AMENDMENT**, is made and entered into by NorthWestern Corporation, of 310 W. 69<sup>th</sup> Street, Sioux Falls, 57108, hereinafter referred to as **NorthWestern**, and Clay-Union Electric Corporation, a South Dakota cooperative, of 1410 East Cherry Street, Vermillion, SD 57069, hereinafter referred to as **Clay-Union**, jointly referred to as the (Parties).

The Parties hereto agree to be bound by all conclusions, terms, conditions, promises and obligations herein contained, which include the following:

1. The Parties to this Amendment are electric utilities as defined by South Dakota statute and are actively engage in furnishing electric services within the state.

2. The South Dakota Public Utilities Commission (SD PUC), pursuant to state law, has established the assigned service territories of each electric utility operating within the state. The SD PUC has prepared, or has caused to be prepared, maps showing the boundaries of the assigned service territories for each electric utility, and any changes to the assigned service territories of an electric utility are subject to approval of the SD PUC.

3. The Parties have previously entered into a territorial agreement (the Agreement), dated October 24, 1973, a copy of which has been attached hereto. The Agreement was made in an effort to resolve existing and potential territorial disputes of the Parties. The Agreement having been administered under the South Dakota Electric Mediation Board, and thereafter having been filed with the SD PUC, was used in the process of setting the Parties official service territories.

4. The Parties have since discovered a discrepancy in the Agreement, in that a portion of the legal description and corresponding map section included as part of the Agreement, do not correctly identify the territorial division of the Parties. Specifically, the

inconsistency has been found in the portion of legal description, which reads:

***From the southwest corner of Section 10, the line runs west to the northeast corner of Lot A of the North Half of the Northeast Quarter of the Northeast Quarter of Section 16, T93N, R55W, thence south along the east side of Lot A to the southeast corner of Lot A, thence west to the southwest corner of Lot A, thence due south ending at the north bank of the Missouri River.***

5. At the time the Agreement was created, the Parties each served customers located on Lot A of the above description. NorthWestern served a customer load on the north portion of Lot A, and Clay-Union served a customer load on the south portion of Lot A. In a further effort to avoid dispute during formation of the Agreement, the Parties resolved to divide Lot A so each of the Parties would continue serving its established customer/s. A territorial modification was created for the sole purposes of the Agreement and is set forth in Clause (2) of that document. This clause created artificial boundary lines for purposes of the Agreement so the legal description would conform to actual service territories of the Parties.

6. The Agreement, did not correctly reflect the territorial division as intended for Lot A. The legal description included all of Lot A as falling within the service territory of NorthWestern. However, only the north part of Lot A was to be included in NorthWestern's service territory. The corresponding map provided a separately incorrect territorial division. The map did not correspond to the legal description and did not correspond to actual service territories.

7. The Parties now desire to correct this discrepancy through this Amendment and said Parties agree that such discrepancy shall be resolved through an updated legal description and corresponding map revision, which shall reflect actual service territories served.

8. The Parties agree the substitute legal description, attached hereto as ***Exhibit A*** and incorporated here by reference, shall replace that portion of the original legal description contained in the Agreement, which is referenced in Paragraph 4 of this

Amendment. Said legal description incorporates the artificial boundary considerations set forth in Clause 2 of the Agreement which shall remain in effect for the designated service boundaries. A substitute map has been prepared corresponding to the updated legal description and is attached hereto as **Exhibit B** and incorporated here by reference as part of this Amendment. This map depicts the agreed upon territorial division of the Parties and the territorial division as it originally set in the Agreement map.

### **General Provisions**

9. This Amendment shall affect no portions of the territorial designation but that portion specifically identified herein, all other portions of the Agreement shall remain in full effect as established under the Agreement, or as changed through any subsequent modification performed according to the laws of South Dakota.

10. This Amendment shall be filed with, and is subject to the approval of, the SD PUC and if such approval is granted, shall be retained by the Parties and the SD PUC as evidence of territorial designation.

11. This Amendment shall be binding upon the Parties and their successors, assigns, agents and representatives.

12. Approval of this Amendment by the Commission shall not in any way constitute a determination by the Commission as to the merits of any allegations or contentions that may arise as a result of this Amendment or the Agreement, and shall not foreclose the Commission from reviewing any allegations or contentions that may arise hereafter.

13. This Amendment shall not foreclose the ability of the Parties hereto, to modify the service territory designations of this Amendment, through the processes identified under the laws of the State of South Dakota.

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NorthWestern

By: Ron Golen

Title: Coordinator - Land & Easement

Date: 6/17/2011

Clay-Union

By: [Signature]

Title: General Manager

Date: 6/24/2011