

STATE OF SOUTH DAKOTA
SS

IN CIRCUIT COURT

COUNTY OF CODINGTON

THIRD JUDICIAL CIRCUIT

CODINGTON-CLARK)

ELECTRIC COOPERATIVE, INC.,) 14CIV25-100

Plaintiff,)

v.)

CITY OF WATERTOWN, SOUTH DAKOTA,) ANSWER TO

MUNICIPAL UTILITIES DEPARTMENT and) AMENDED COMPLAINT

THE SOUTH DAKOTA PUBLIC UTILITIES)

COMMISSION,)

Defendants.)

Answer

The Defendant City of Watertown, South Dakota, Municipal Utility Department (“Defendant”), for its Answer to the Complaint of Plaintiff Codington-Clark Electric Cooperative, Inc. (“Plaintiff”), states as follows:

1. Pursuant to SDCL 15-6-8(b), Defendant denies each allegation, claim, and contention set forth in the Complaint, including all numbered paragraphs and the prayer for relief, and specifically denies that Plaintiff is entitled to any relief whatsoever, unless specifically admitted herein.
2. Generally, any admission should be limited to that portion applicable to the statement that:

Codington Clark Electric, Inc. approached the Defendant through its attorney to seek the termination to the ongoing agreement as perpetual,

made that request to the THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION, obtained Commission approval and executed such agreement.

Moreover, Codington Clark Electric Cooperative, Inc. participated in the ongoing perpetual relationship as initiated by them and written in the binding agreement, and after operating for years under the agreement, now seeks a change in the term they proposed, and in an agreement they entered validly, knowingly, under the advice of counsel.

3. In further response and without limiting the foregoing general denial, Defendant admits paragraphs 1 through 8, 10 through 22, and 25, to the extent factual but denies any explicit or implicit argument contrary to the position of the Defendant. It is noted that the South Dakota Public Utilities Commission regulation of the Defendant is limited to the service territory lines such as this agreement.
4. As to paragraph 9 of the Complaint, the Defendant denies that the agreement provided the modification of rights of annexation under SDCL Ch. 49-34.
5. As to paragraph 23, the Defendant denies.
6. As to paragraph 24, the Defendant admits an agreement between the Plaintiff and Defendant entered into the agreement.
7. As to paragraph 26, the Defendant denies.
8. As to paragraph 27, the Defendant denies.
9. As to paragraph 28, the Defendant denies.
10. As to paragraph 29, the Defendant denies.
11. As to paragraph 30, the Defendant admits that the Plaintiff has requested the Defendant agree to terminate the Agreement but denies the balance of the allegations.

12. As to paragraph 31, the Defendant admits that the Defendant has refused to terminate the Agreement, but denies the balance of the allegations.
13. Defendant denies the allegations of paragraph 32, as the allegations and prayer usurp the authority of the South Dakota Public Utilities Commission.

Affirmative Defenses

Without admitting any allegation of the Complaint and preserving its denials, Defendant asserts the following affirmative defenses. Each defense is pled in the alternative to the extent necessary.

1. **Public Policy. Regulatory Approval Supports Enforceability.** The alleged agreement does not violate public policy, including with respect to any perpetuity feature, particularly where the agreement and addenda were subject to regulatory oversight and approval. The Complaint alleges that the agreement and subsequent addenda were to be submitted to, and were subject to approval by the South Dakota Public Utilities Commission To the extent approved or mandated by the regulator, public policy favors enforcement.
2. **Regulatory Approval.** Plaintiff's claims are barred or limited by the fact that the agreement and addenda were presented for and subject to approval by the South Dakota Public Utilities Commission, supporting enforceability as approved. The Complaint alleges submission of the July 30, 2007, addendum to the Commission and a subsequent September 20, 2007 addendum providing for a perpetual term subject to Commission approval.

3. **Void vs. Voidable.** Any alleged defect renders the contract, if at all, voidable rather than void, and subject to ratification; Plaintiff has ratified and is estopped to deny enforceability through its conduct.
4. **Equitable Defenses.** Plaintiff's claims are barred in whole or part by waiver, estoppel, ratification, laches, and unclean hands, based on Plaintiff's course of performance and delay in asserting the claims.
5. **Consideration.** Plaintiff's claims fail because there was consideration and mutual covenants supporting the agreement and addenda, and any allegation of lack of consideration is denied. The Complaint attaches agreements and addenda reciting "IN CONSIDERATION of the mutual covenants herein contained" or similar language.
6. **Modification by Mutual Consent Only.** The agreement provides that modifications require mutual written consent, precluding unilateral alteration or judicial reformation absent mutual assent. The Complaint's attached documents state the parties could modify the agreement by mutual consent and reflect addenda executed by both parties.
7. **Binding Nature of Perpetuity Provision.** Any perpetual term, to the extent approved or required by the regulator, is binding on the parties. The Complaint alleges a September 20, 2007, addendum providing the term "shall be perpetual," subject to Commission approval.
8. **Waiver of Compensation and Franchise Rights.** Plaintiff waived compensation and franchise-related rights under the agreement. The Complaint's attached 1993

agreement recites that Codington-Clark waives its right to compensation under SDCL 49-34A-50 for certain acquisitions and that the City waives payments under SDCL 49-34A-46 within annexed areas.

9. **Voluntary and Informed Participation.** Plaintiff acted voluntarily and with knowledge, including in extensive use of legal counsel, in negotiating, executing, and performing under the agreement and addenda over multiple years; any alleged surprise or duress is denied. The Complaint alleges Plaintiff executed agreements and addenda dated 1993, 1998, 2001, 2004, 2007, and submitted filings to the Commission.
10. **Course of Dealing and Performance.** Plaintiff's claims are barred or limited by the parties' long-standing course of dealing, performance, and acquiescence under the agreement and addenda. The Complaint alleges successive addenda extending or altering the term across multiple years.
11. **Preclusion by Regulatory Approval or Mandate.** To the extent the regulator approved or required specific terms, Plaintiff is precluded from asserting public policy violations or collateral attacks on the approved framework. The Complaint alleges Commission involvement, including a request to make the agreement perpetual and submission of a perpetual addendum for approval.
12. **Declaratory Judgment Not Appropriate.** Plaintiff's request for declaratory relief is improper for lack of ripeness, justiciability, or necessity; an adequate alternative remedy exists; and Plaintiff seeks an advisory opinion on hypothetical disputes.

The Complaint seeks a declaration of rights under the agreement and alleges a controversy exists.

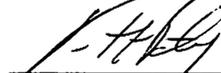
13. Failure to State a Claim. The Complaint fails to state facts sufficient to constitute a cause of action for declaratory relief or breach; it identifies no actionable breach or affirmative misconduct by Defendant. The Complaint characterizes the case as an action for declaratory judgment and does not allege a breach by Defendant.

WHEREFORE, Defendant respectfully requests that the Court:

- a) Dismiss the Complaint with prejudice;
- b) Enter judgment in favor of Defendant and against Plaintiff on all claims;
- c) Award Defendant its costs as allowed by law; and
- d) Grant such other and further relief as the Court deems just and proper.

DATED: March 10, 2026

FOLEY AND FOLEY LAW OFFICE, P.C.



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