

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

In The Matter of the Request for a Declaratory Ruling Regarding the Electric Service Territory Boundary Between Clay-Union Electric Corporation and City of Vermillion	EL21-022 ANSWER TO PETITION FOR DECLARATORY RULING
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Respondent City of Vermillion (“respondent” hereafter), by and through its attorney, James E. McCulloch, answers the petition for declaratory ruling as follows:

1. The petition for declaratory ruling fails to state a claim or cause of action upon which relief can be granted and upon proper notice should be dismissed.
2. Respondent denies all allegations contained in the petition for declaratory ruling except those specifically admitted herein.
3. Respondent admits the following portions of the petition for declaratory ruling:
 - a. First page – admits.
 - b. Second page- admits, except last sentence (partial).
 - c. Third page – admits paragraphs 3, 4 and 5.
4. As new matter or affirmative defense, the state of South Dakota’s Department of Transportation and respondent are engaged in highway and drainage improvement projects in, under, over and along South Dakota Highway 50 and have entered into contractual agreements allocating costs and responsibilities between the parties. Of the 15 road lighting system lights petitioner seeks to service in its petition for declaratory ruling, none are being paid for by the petitioner. Ten of them are being paid for by the South Dakota Department of Transportation and five of them by respondent. The 15 lights are also staggered or interspersed among the lights in respondent’s service area in some places. One pertinent allocation of responsibilities is that of maintenance once the projects are complete sometime in 2021. Responsibility for maintenance of the new road lighting system is that

of respondent, as well as power supply. Petitioner will not maintain any of the system. Although the great majority of the road lighting system's lights are in respondent's service area, 15 are in petitioner's. Ownership of all the road lighting system will be with respondent per those contractual agreements. Exhibit A is attached hereto and incorporated herein as if set forth in full.

5. As new matter or affirmative defense, respondent is enabled by SDCL 49-34A-57 to extend its electric services to the road lighting system in petitioner's utility service area due to its ownership of it as provided for in Exhibit A. Such an extension does not effectuate a change in utility service area boundary. The service extension is instead authorized by the SDCL 49-34A-57 statutory exception to exclusive service rights in a utility service area, requiring neither consent from petitioner nor approval from the South Dakota Public Utilities Commission. The statute contains no provision for such approval.

However, if it is determined that respondent is incorrect, and the South Dakota Public Utilities Commission's approval is in fact needed to effectuate the provisions of SDCL 49-34A-57 regarding respondent's electric service to the road lighting system, respondent requests that approval now be given via this proceeding.

6. Respondent is aware of two other recent instances in which road lighting systems traversed two utility service areas, one in Charles Mix County and one in Brookings County. The Charles Mix County instance resulted in an SDCL 49-34A-55 agreement, which requires South Dakota Public Utilities Commission approval. No SDCL 49-34A-57 public service facilities ownership circumstance appears in that case, however. See Exhibit B attached hereto. The Brookings County instance did have an ownership circumstance. Because of the apparent self-executing nature of SDCL 49-34A-57 when public service facilities

ownership is involved, no South Dakota Public Utilities Commission approval was sought or obtained. See Exhibit C attached hereto. A third instance exists in Clay County on part of Cherry Street in Vermillion, South Dakota. Respondent provides electric services to all of the Cherry Street lights, some of which are in petitioner's service area with the others in respondent's. No change in service area boundary has occurred as a result.

7. As new matter or affirmative defense, the term "public service" used in SDCL 49-34A-57 finds definition in Webster's Unabridged Dictionary, Second Edition:

"public service 1. The business of supplying an essential commodity, as gas or electricity, or a service, as transportation, to the general public (remaining definitions omitted)."

The word "facilities" also finds definition in that same dictionary:

"facility 1. Often, facilities. a. something designed, built, installed, etc., to serve a specific function affording a convenience or service: transportation facilities; educational facilities; a new research facility (remaining definitions omitted)."

Therefore, plain language definition of the phrase "public service facilities" encompasses the road lighting system.

8. Respondent has not committed a utility service area violation.

WHEREFORE, respondent requests that the petition for declaratory ruling herein be determined in respondent's favor and respondent be awarded its costs, disbursements and attorney fees herein, and any other relief deemed appropriate, or, alternatively, respondent be given approval to effectuate SDCL 49-34A-57 provisions and provide electric service to the entirety of the road lighting system.

Dated this 29th day of July, 2021.



James E. McCulloch
Vermillion City Attorney
P.O. Box 335
Vermillion, South Dakota 57069
(605) 624-4262
Email: mccullochlaw@midconetwork.com

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing Answer to Petition for Declaratory Ruling in this matter were served electronically on the parties listed below on the 29th day of July, 2021, address to:

Ms. Patricia Van Gerpen
Executive Director
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
patty.vangerpen@state.sd.us

Ms. Kristen Edwards
Staff Attorney
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
Kristen.edwards@state.sd.us

Mr. Darren Kearney
Staff Analyst
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
darren.kearney@state.sd.us

Mr. Jon Thurber
Staff Analyst
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
jon.thurber@state.sd.us

Miles Schumacher
Lynn, Jackson, Schultz & Lebrun, P.C.
110 N. Minnesota Ave., Suite 400
Sioux Falls, SD 57104
605-322-5999
mschumacher@lynnjackson.com

and

Michael F. Nadolski
Lynn, Jackson, Schultz & Lebrun, P.C.
110 N. Minnesota Ave., Suite 400
Sioux Falls, SD 57104
605-322-5999
mnadolski@lynnjackson.com

By: 

James E. McCulloch
Vermillion City Attorney
P.O. Box 335
Vermillion, South Dakota 57069
(605) 624-4262
Email: mccullochlaw@midconetwork.com