

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

**IN THE MATTER OF THE APPLICATION OF ) ORDER FOR CONTINUANCE  
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 (E½ SE¼) 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 ¼ 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 ¼ 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 ½ of the NW¼ 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 SW¼ of the NW¼ and Lot H-1 of the West ½ of the SW¼.

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.

<b>CERTIFICATE OF SERVICE</b>	
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>Helaine Kalbo</u>
Date:	<u>4/29/98</u>
(OFFICIAL SEAL)	

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

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