

**COUNCIL ACTION FORM**

**SUBJECT: LEGAL SERVICES FOR SERVICE TERRITORY DISPUTE WITH USDA**

**BACKGROUND:**

The USDA's National Center for Animal Health occupies 523 acres on the northeast side of Ames. The property straddles the service territory boundary between Interstate Power and Light Company (IPL) and Ames Municipal Electric System (AMES), such that 153.85 acres of this property is in AMES' service territory. **AMES serves several buildings in this area, including one identified by USDA as Building 21. USDA would prefer that Building 21 be served by IPL.**

The Iowa Legislature enacted exclusive service territories for electric utilities in order to "encourage the development of coordinated statewide electric service at retail, to eliminate or avoid unnecessary duplication of electric utility facilities, and to promote economical, efficient, and adequate electric service to the public." Pursuant to that, the Iowa Utilities Board (IUB) established exclusive service territories throughout Iowa and electric utilities have designed their systems based upon those established boundaries. While the Board has the authority to modify the boundaries based upon considerations such as preventing unnecessary duplication of facilities or natural or physical barriers that prevent economic service arrangements, the boundaries may only be modified if the Board finds the change is in the public interest.

AMES began providing service to Building 21 in 2004. In recent years, Building 21 has averaged a peak load of 350 kW and represents annual electric sales of about 2,533,656 kWh, for annual revenues to AMES of close to \$200,000 per year. This makes Building 21 one of AMES' 15 largest customers in terms of usage and revenue. The USDA has also made it known that they are planning a building expansion and consolidating additional labs into Building 21; the potential revenue could grow to nearly \$500,000/year.

**The USDA asked the IUB to modify the service area boundaries around Building 21 to assign the building to IPL's service territory or to "simply declare that it will not be deemed a territorial violation by [IPL] if the USDA disconnects Building 21 from [AMES]." It should be emphasized that losing this customer would have an adverse impact on the remaining retail customers of AMES.**

USDA says it has upgraded its electrical systems served by IPL to provide redundancy and reliable power to certain laboratory facilities. IPL delivers service to USDA's facilities at a location known as Building 153, which has two feeders, backup **generators, and full-time monitoring. USDA would like to connect Building 21 to Building 153. AMES has suggested a number of alternative solutions that would provide redundant, reliable service to Building 21 with full-time monitoring, but USDA has**

**rejected those suggestions without explanation.**

**Due to USDA's complaint at the IUB, specialized outside legal services were needed. On September 26, 2018, the City Attorney signed an Engagement Letter for legal services with the BrownWinick law firm of Des Moines.** An initial Purchase Order was created in an amount of \$24,900 to begin the work, with hopes of an agreeable settlement without a hearing. As negotiations stalled, it was clear the City was going to hearing at the IUB, so Change Order #1 for \$24,900 was approved on August 15, 2019 to prepare and defend the initial complaint. The hearing was held on August 27, 2019.

**A draft order was issued by the IUB, stating that the entire IUB campus be consolidated under the IPL territory, not simply Building 21. This means that if the transfer takes place, the City will lose its eighth largest customer with a yearly revenue of close to \$500,000.**

Since the hearing, the IUB has reopened the hearing to request additional data from AMES, IPL and the USDA. Outside legal counsel has been performing additional work to respond to these data requests and to review and respond to the responses made by the other parties. Change Order #2 was approved on November 26, 2019 in the amount of \$50,000 to complete this work. A third change order was approved on July 16, 2020 in the amount of \$24,900, bringing the total contract amount to \$124,700.

On June 23, 2021, the IUB issued the "Order Setting Procedural Schedule." The parties, including AMES, filed direct testimony on August, 19, rebuttal testimony on September 19, and reply testimony on September 30, 2021. The parties will be participating in a hearing at the IUB on October 29, 2021. **At this time, the funds in the current Purchase Order have nearly been exhausted. Staff is requesting that the City Council approve Change Order #4 in an amount of \$50,000. That action will increase the overall authorized amount to \$174,700. This increase is needed to cover the cost of the hearing, the filing of post-hearing briefs, and possible settlement negotiations. Following the filing of post-hearing briefs and the possible outcome, the City may need to be prepared to appeal the ruling to District Court.**

The FY 2021/22 Purchased Power budget includes \$74,250 for outside legal services, which can be used to cover this additional \$50,000 expense.

**ALTERNATIVES:**

1. Approve Change Order #4 in an amount of \$50,000 to the professional services agreement with BrownWinick of Des Moines, Iowa, increasing the amount of the purchase order to \$174,700. The City will continue to be billed on an hourly basis for services incurred in accordance with the agreement.
2. Do not approve the proposed change order and ask staff for further information.

**CITY MANAGER'S RECOMMENDED ACTION:**

USDA, a retail electric customer, does not have the statutory authority to seek a modification of electric service territory boundaries pursuant to Iowa Code § 476.25. Electric service territory boundaries were established to preserve existing relationships between utilities and their customers, to prevent unnecessary duplication of facilities, to take account of natural barriers to service, and to recognize any contracts between electric utilities. Those boundaries have been an important factor in distribution system design since they were established, as utilities rely on the established boundaries to determine where they can, and where they cannot, provide retail electric service. It is critical that the City challenge this complaint at the IUB; loss of this load would cause shift costs to the remaining electric customers of the City if not properly compensated.

BrownWinick has provided excellent service to the Electric Utility throughout this process; seeking other legal counsel at this point, or discontinuing the process altogether, could seriously impair the results.

Therefore, it is the recommendation of the City Manager that City Council adopt Alternative No. 1, as described above.