
SHERMAN & HOWARD

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May 5, 2017

VIA EMAIL (mdavidson@fwlaw.com) AND U.S. MAIL

Mark A. Davidson, Esq.
Fairfield and Woods P.C.
1801 California Street, Suite 2600
Denver, CO 80202

Re: Town of Frederick Violations of United Power's Service Territory

Dear Mr. Davidson:

We are in receipt of your letter dated May 1, 2017, in which the Town of Frederick denies any improper infringement on United Power's service territory. The explanations in your letter are unavailing, and the Town's continued denial of responsibility for its actions will leave us no choice but to move forward with actions to protect United Power's property rights.

The Town's provision of electric service to the Agilent site, among other actions, violates the Wholesale Power Service Agreement ("Agreement") and statutory law. The Town's disregard of the parties' agreements and expectations, and apparent belief that it can ignore its legal obligations with impunity, is indeed disappointing — especially in light of United Power's repeated good faith efforts to resolve matters with the Town.

The Agreement, at § 1.1, clearly delineates between the Town's electric system boundary and the Town's municipal boundary. The Town agreed to compensate United Power for any expansion beyond the Town's electric system boundary, as described on January 1, 2014 by the Agreement and attached maps. In fact, the parties expressly agreed that the Town had given notice of its intent to expand its electric system boundary to the extent of its municipal boundary, and the Town committed to compensating United Power for any such expansion. The Agilent site is squarely outside the Town's agreed-upon electric system boundary and within the Town's municipal boundary. In other words, this is the precise situation contemplated by the parties, the

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Town committed to compensating United Power for this situation, and the Town is now attempting to shirk its express commitment. Compensation is due under the Agreement.

Putting the Agreement aside, the Town's actions also require it to compensate United Power pursuant to § 40-9.5-204, C.R.S. Your assertion that no existing facilities were in the disputed area is factually incorrect. An examination of the Agilent site reveals that the Town's underground facilities are built a few yards away from United Power's existing overhead facilities. United Power continues to serve the Town's public works building as a customer in the immediate vicinity. The Town's decision to build parallel facilities as part of illegally usurping a lucrative end-user has devalued and rendered idle United Power's existing facilities and requires separate compensation under § 40-9.5-204(1)(a), C.R.S., and reintegration damages under § 40-9.5-204(1)(b), C.R.S.

Further, the assertion that the statute is applicable only to a service territory with existing customers is incorrect. Section 40-9.5-204(1)(d), C.R.S. also contemplates compensation for new customers. The argument that the statute is inapplicable to the taking of new customers is contrary to the plain, and straightforward, language of the statute. Compensation for taking a new customer is due under § 40-9.5-204(1)(d), C.R.S. and will become due for any additional customers who come into existence in the affected area over the next ten years. And compensation is also due under § 40-9.5-204(1)(c), C.R.S.

United Power is finalizing its damages calculations it intends to seek in Court if need be for facilities taken, reintegration costs, lost customers and loss of service rights. United Power's calculation to date is that the Town owes United Power at least \$600,000 at this point for its facilities rendered idle by the Town's actions, and for reintegration costs (but this amount is conservative); and \$1,125,000 for taking of a customer in this area, plus future damages on the Agilent load alone of at least \$225,000 (although the damages are increasing). Those component amounts total \$1,950,000 now, and increasing. United Power's final number will be much higher because we have evidence the Town has taken or has planned to take on additional customers of United Power in violation of law.

The Town's position that it is merely a competitor to United Power is belied by the facts. The Town has systematically deprived United Power of the ability to compete for customers within United Power's service territory, through annexation agreements exhibiting exclusive dominion and control and through surreptitious negotiations with Agilent that entirely preempted competition. In any event, the Town's denial of its predatory behavior has no bearing on its obligation under the Agreement to compensate United Power for any expansion of its electric system boundary. The Agreement contains no caveat for competition; it requires compensation for any expansion. And we have evidence that the Town has plans for even further illegal expansion.

Mark A. Davidson, Esq.

May 5, 2017

Page 3

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We understand from your letter that the Town does not intend to relinquish the property rights it has taken, has no intent to stop its illegal activities, and has no intent to compensate United Power or remedy the Town's unlawful conduct. You simply suggest that the Town is willing to have "further settlement discussions," but on its terms and its timeline. Such a position merely reinforces the Town's indifference to its violations of the Agreement and law — indifference and lack of good faith a court will not countenance. Any discussions must commence immediately and conclude with a resolution consonant with the law, the Agreement, and with the expectations of United Power's members — quite a number of whom are Frederick citizens. Kindly advise me of times you and someone with actual authority to resolve the matter can meet with Darryl Schriver and me. Thank you.

Sincerely,



Mark W. Williams

cc: Darryl Schriver, United Power