

STATE OF MINNESOTA

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Katie Sieben	Chair
Joseph K. Sullivan	Vice Chair
Valerie Means	Commissioner
Matthew Schuerger	Commissioner
John Tuma	Commissioner

In the Matter of the Complaint by Red River
Valley Cooperative Power Association
arising from an Assigned Service Area
Violation by the City of Barnesville and
Barnesville Municipal Power

COMPLAINT
MPUC Docket No. _____

Complainant Red River Valley Cooperative Power Association (“RRV”), for its complaint arising from an assigned service area violation by Respondent City of Barnesville and Barnesville Municipal Power (collectively, “City”) with respect to City’s servicing of a customer located within RRV’s assigned service area, states and alleges as follows pursuant to Minn. Stat. § 216B.43:

1. RRV is a member-owned electric cooperative that provides electric services in an exclusive service area located in northwestern Minnesota.
2. Pursuant to Minn. R. 7829.1700, RRV states that its address is PO Box 358, 109 2nd Ave E, Halstad, MN 56548. The name and address of RRV’s counsel in this matter is: Sara G. McGrane, Esq. and Patrick D. Messmer, Esq., Felhaber Larson, 220 South 6th Street, Suite 2200, Minneapolis, MN 55402.
3. City is a municipal corporation, which owns a municipal electric utility, and provides electric service within its own assigned service area.

4. City's address is City of Barnesville, PO Box 550, 102 Front St. N., Barnesville, MN 56514, Attn: Mike Rietz, City Administrator. The address of City's counsel is Ohnstad Twichell, 444 Sheyenne St., Suite 102, P.O. Box 458, West Fargo, ND 58078-0458, Attn: Lukas Croaker, Esq. and Christopher McShane, Esq.

5. Dollar General operates a retail store located at 801 Front Street N, Barnesville, MN 56514 ("Dollar General").

6. The City is currently providing electrical service to the Dollar General, and has provided such electrical service since the Dollar General commenced operations in or about 2013.

7. The Dollar General is wholly located within the exclusive service area assigned to RRV by the Minnesota Public Utilities Commission ("Commission").

8. RRV has the capacity and ability to service the electric load arising from the operation of the Dollar General.

9. In addition to the Dollar General, there is a former Dairy Queen property referred to as being located at 624 Front Street N in the May 2013 Letter (as that term is defined hereinafter), and being approximately located adjacent to the Dollar General at the corner of Highways 9, 34, and Clay County 2 ("Dairy Queen Site"), and further depicted as #6 on the map included with the City's May 2013 Letter attached hereto at Exhibit B.

10. Per a letter dated June 24, 2008 ("June 2008 Letter"), a copy of which is attached hereto as Exhibit A, RRV stated to the City that "any new consumer desiring electric service within [RRV]'s service territory will be served by [RRV]."

11. In a letter dated May 13, 2013, the City submitted to RRV a list of accounts that the City served within RRV's service area. In that letter, the City sought to delete the Dairy Queen Site from the list. As shown on Exhibit D, the Dairy Queen Site is within RRV's service

area. In response, via a letter dated May 17, 2013 (“May 2013 Letter”), RRV agreed to remove the Dairy Queen Site from the list of accounts located within the RRV service area that RRV consented to the City servicing. Copies of both letters are attached hereto as Exhibit B.

12. As referenced in the June 2008 Letter, the list discussed in the May 2013 Letter dealt only with the then-current consumers, and any new consumers would be serviced by RRV.

13. One of the accounts listed on the May 2013 Letter was that of the Egge Property, located at 15947 Hwy 9 So.

14. Pursuant to Ordinance No. 2013-09, a copy of which is attached hereto as Exhibit C, the City annexed the Egge Property.

15. After annexation, a portion of the Egge Property was developed for use as the Dollar General, and the address changed to 801 Front Street N, Barnesville.

16. The Dollar General represents a new consumer completely unique and distinct from the previous account listed as the “Egge Property”. Per the June 2008 Letter, RRV is entitled to serve any new consumer within its service area.

17. On October 14, 2019, RRV sent a letter to the City informing the City that RRV had learned that the City was providing electric service to Dollar General, and that the Dollar General resided within the RRV service area.

18. Per the City’s response, in a letter dated October 30, 2019, the City also intends to provide electric service to the Dairy Queen Site, and in fact may already be providing electric service to the Dairy Queen Site.

19. Upon information and belief, the City has purchased the Dairy Queen Site, and intends to develop a municipal liquor store on the property.

20. RRV did not consent to the City servicing any electric load for that site and/or any consumer located there, and RRV has not granted permission to the City to service any electric load resulting from the future development of that site.

21. The Dairy Queen Site is located within the service area assigned to RRV by the Commission.

22. RRV has the capacity and ability to service any electric load arising from the future development and operation of the Dairy Queen Site.

23. In addition to the June 2008 Letter and May 2013 Letter, RRV has corresponded with the City on several occasions. RRV has made numerous efforts to obtain just compensation from the City for RRV's past and future loss of revenue for these two sites. RRV submitted a letter to the City regarding this service area violation on October 14, 2019. Since that time, RRV or its counsel has submitted approximately seven (7) letters to the City or its counsel, in addition to numerous emails, all seeking to amicably resolve this matter.

24. These efforts have been met with no meaningful response from the City.

25. Pursuant to Minn. R. 7829.2000, attached hereto as Exhibit D is a copy of the official service area map of the area at issue. The area of the map shaded red shows the City's service area, and the unshaded area shows RRV's assigned service area. The position of the Dollar General is denoted by the large black dot, which is located wholly within RRV's assigned service area. The approximate position of the Dairy Queen Site is depicted by the black "X".

CLAIM FOR RELIEF

26. The Minnesota Public Utilities Act, Minn. Stat. § 216B.01 *et seq.*, establishes exclusive service areas for electric utilities.

27. Pursuant to Minn. Stat. § 216B.40, electric utilities have the “exclusive right to provide electric service at retail to each and every present and future customer in its assigned service area” and no other electric utility may “render or extend such electric service at retail within the assigned service area of another electric utility unless the electric utility consents thereto in writing.”

28. RRV has not consented to the City providing electric service to the Dollar General, and the City providing such electric service within RRV’s exclusive service area violates Minn. Stat. §216B.40.

29. RRV has not consented to the City providing electric service to the Dairy Queen Site, and the City seeking to provide such electric service within RRV’s exclusive service area violates Minn. Stat. §216B.40.

30. Minn. Stat. §216B.41 provides that “annexation of any part of the assigned service area of an electric utility” does not in any way “impair or affect the rights of the electric utility” unless the municipality elects to purchase the facilities and property of the electric utility.

31. The City has not purchased any facilities and/or property from RRV, nor has the City compensated RRV in any way for the loss of the electric loads which are properly RRV’s to serve, and thus RRV’s rights to continue to extend electric service at retail throughout RRV’s assigned service area have been violated by the City.

32. If the City contends that RRV no longer has such rights to extend electric service to the Dollar General and Dairy Queen Site as a result of any annexation, then RRV is owed compensation pursuant to Minn. Stat. §216B.44 for the value of RRV’s property and facilities, as well as the loss of revenue suffered by RRV.

WHEREFORE, RRV respectfully requests that the Commission: (i) hold a hearing pursuant to Minn. Stat. §216B.43; (ii) issue an order finding that RRV has the exclusive right to provide retail electric service within its assigned service area, including to the Dollar General and Dairy Queen Site; (iii) issue an order finding that the City has violated RRV's exclusive right to provide such service in violation of Minn. Stat. §216B.40; and (iv) order the City to compensate and reimburse RRV for the loss of revenue to RRV for the service of electric loads to the Dollar General from 2013 to the present and for future loss of revenue.

Respectfully submitted,

Date: October 8, 2020

FELHABER LARSON

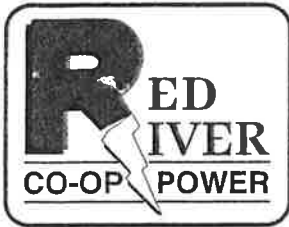
By: /s/ Sara G. McGrane
Sara G. McGrane, #233213
Patrick D. Messmer, #0401578
220 South Sixth Street, Suite 2200
Minneapolis, MN 55402
(612) 373-8511

smcgrane@felhaber.com

pmessmer@felhaber.com

*Attorneys for Complainant Red River Valley
Cooperative Power Association*

EXHIBIT A
JUNE 2008 LETTER



RED RIVER VALLEY
COOPERATIVE POWER ASSOCIATION

P.O. Box 358 • Halstad, MN 56548

Phone: (218) 456-2139
Fax: (218) 456-2102
Toll free: 1-800-788-7784
Website: rrvcoop.com

AN EQUAL OPPORTUNITY EMPLOYER

June 24, 2008

Mr. Michael Brethorst
PO Box 550
102 Front Street North
Barnesville, MN 56514

RE: Electric customers.

Dear Mr. Brethorst:

Thank you for your letter indicating the customers that the City of Barnesville has been serving for decades.

Red River recognizes that the City of Barnesville has been serving certain consumers within Red River's service territory for many years. As we discussed and agreed to several weeks ago, these consumers will continue to receive electric service from the City of Barnesville and we will not seek past or future compensation for the following customers.


	Address	Customer
1	17244 165 Ave. S.	Lee
2	17167 165 Ave. S.	Lewis
3	Cemetery #1	Gromish
4	Cemetery #2	Gromish
5	16543 Hwy 9 S.	Lemanson
6	16549 Hwy 9 S.	Arnson
7	624 Front Street N.	?
8	17963 Hwy 52 South	Barnesville Building Center
9	17945 Hwy 52 S	Clay County
10	County 2 - RR	Ottertail Railroad
11	419 8th St. NW	Berg

As we also discussed, any new consumer desiring electric service within Red River's service territory, will be served by Red River.



If you have any questions or comments, please call.

Sincerely,

A handwritten signature in cursive script that reads "Lauren Brorby". The signature is written in black ink and is positioned above the printed name and title.

Lauren Brorby
Chief Executive Officer

EXHIBIT B
MAY 2013 LETTER

P.O. Box 550
102 Front St. N.
Barnesville, MN 56514



Phone: 218 354-2292
Fax: 218 354-2472
E-mail: barnesville@bvillemn.net

May 13, 2013

Red River Valley Coop Assn.
Lauren Brorby, CEO
P.O. Box 358
Halstad, MN 56514

RE: Electric Service Boundary

Dear Lauren,

The attached letter dated May 23, 2008 includes a list of the properties the City of Barnesville has been serving since before 1975. Number # 6 on that list: 624 Front St. is the old Dairy Queen this property is in the City Limits and should not have been on that list. Number #6 should be eliminated from the list.

The property located just north of the Dairy Queen - 15947 Hwy 9 S is the "Egge Property" I have added to the list as number #12; this property should have been included in the 2008 list but was inadvertently missed. The City of Barnesville has been serving this property since before 1975 as well. The attached map shows the location of these properties.

Corrected List

ADDRESS	Current Customer (May 2013)
1) 17244 165 Ave So	Lee
2) 17167 165 Ave So	Lewis
3) Cemetery #1	Gromish
4) Cemetery #2	Gromish
5) 16543 Hwy 9 So	Iemanson
6) 16549 Hwy 9 So	Arnson
7) 624 Front St N.	Old Dairy Queen (Remove from this list) - DELETE
8) 17963 Hwy 52 So	Barnesville Building Center
9) 17945 Hwy 52 So	Clay County
10) County 2- RR Bungelow	Otter Tail Railroad
11) 419 8th St NW	Berg
12) 15947 Hwy 9 S.	Egge Property - ADD

If you are in agreement with these changes please provide us a letter of agreement stating that the above "corrected" customers would remain customers of Barnesville Municipal Electric without penalty as we have been serving them for a number of years. Please review your customer list to cross check the above customer list. We thank you for your consideration on this matter.

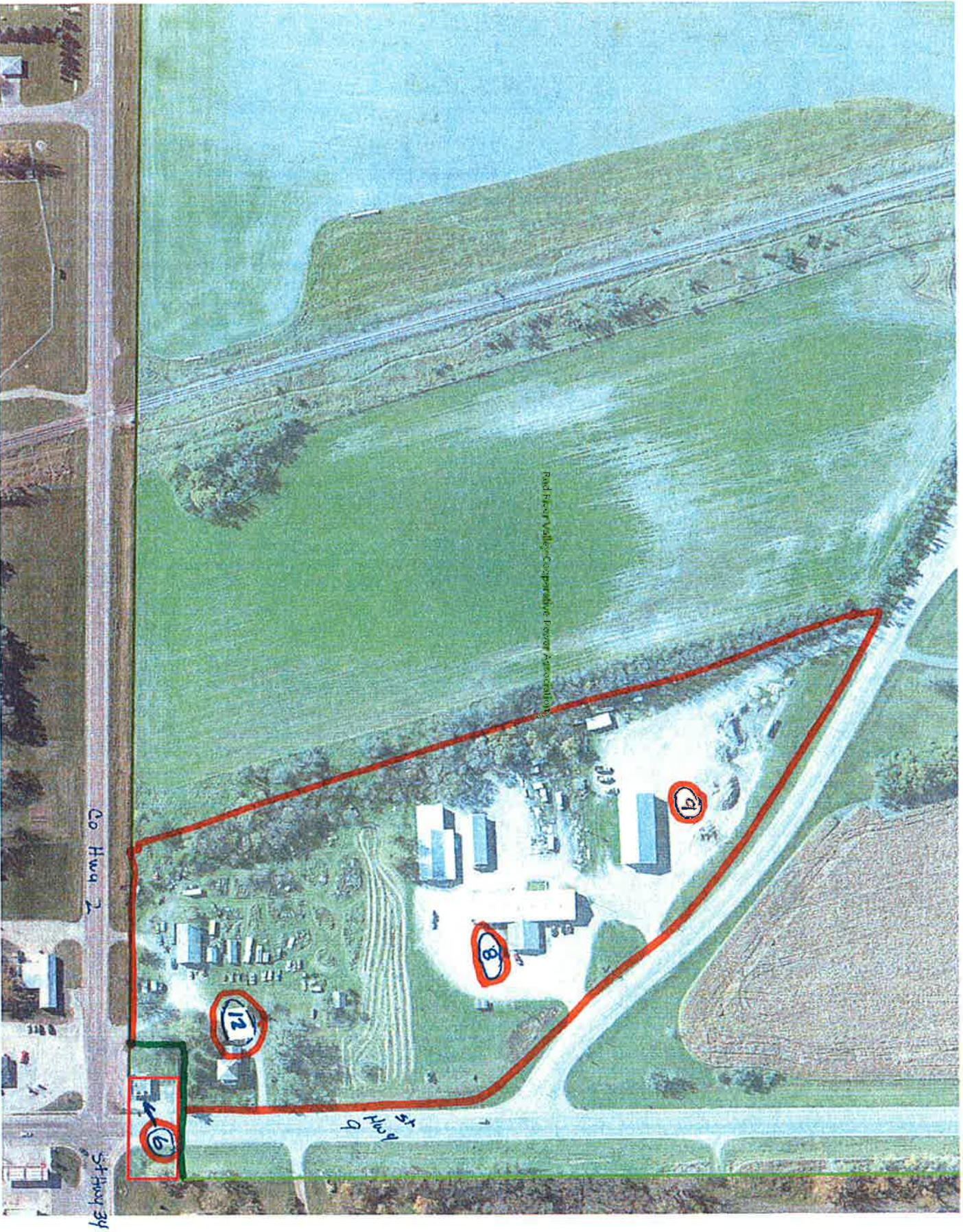
Regards,

CITY OF BARNESVILLE


Guy A Swenson
TEC Manager

"a neighborly place to grow"

"The City of Barnesville Is An Equal Opportunity Provider And Employer"





RED RIVER VALLEY
COOPERATIVE POWER ASSOCIATION
P.O. Box 358 • Halstad, MN 56548

Phone: (218) 456-2139
Fax: (218) 456-2102
Toll free: 1-800-788-7784
Website: rrvcoop.com

AN EQUAL OPPORTUNITY EMPLOYER

May 17, 2013

City of Barnesville
Guy A. Swenson, TEC Manager
PO Box 550
102 Front Street North
Barnesville, MN 56514

RE: Electric Service Boundary.

Dear Guy:

Thanks for the revised list. I agree with the following list of accounts that the City is serving in Red River's service territory. The revised list is as follows:

Corrected List

Address	Current Customer (May 2013)
1. 17244 165 Ave. So.	Lee
2. 17167 165 Ave. So.	Lewis
3. Cemetery #1	Gromish
4. Cemetery #2	Gromish
5. 16543 Hwy 9 So.	Iemanson
6. 16549 Hwy 9 So.	Arnson
7. 624 Front St. N.	Old Dairy Queen (remove from this list)
8. 17963 Hwy 52 So.	Barnesville Building Center
9. 17945 Hwy 52 So.	Clay County
10. County 2 - RR Bungalow	Ottertail Railroad
11. 419 8th St. NW	Berg
12. 15947 Hwy 9 So.	Egge Property - Add

Sincerely,

Lauren Brorby
Chief Executive Officer

EXHIBIT C
ORDINANCE 2013-09

ORDINANCE NO. 2013-09

AN ORDINANCE OF THE CITY OF BARNESVILLE ANNEXING LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 137 NORTH, RANGE 46 WEST, CLAY COUNTY, MINNESOTA TO THE CITY OF BARNESVILLE, CLAY COUNTY, MINNESOTA, PURSUANT TO MINNESOTA STATUTE § 414.033, SUBD. 2(3), PERMITTING ANNEXATION BY ORDINANCE

WHEREAS, the City of Barnesville has received a Petition for Annexation from all landowners of the property to be annexed; and

WHEREAS, under state law, the landowner has the right to request annexation into the City of Barnesville, and the City of Barnesville has authority to annex such property.

NOW, THEREFORE, THE CITY OF BARNESVILLE DOES HEREBY ORDAIN:

Section 1. That the unincorporated land legally described in Exhibit A, which is attached hereto and incorporated herein by reference, located in the Southeast Quarter of Section 24, Township 137 North, Range 46 West, Clay County, Minnesota, is land that is contiguous to and abuts the municipal corporate limits of the City of Barnesville, Clay County, Minnesota; is land that is 120 acres or less in size; is land that is not presently served by public wastewater facilities, and for which public wastewater facilities are not otherwise available than through the City of Barnesville; and is land that is existing or proposed for immediate urban or suburban development.

Section 2. That the property-owner of the property legally described in Exhibit A has requested annexation for purposes of immediately redeveloping the land for additional urban or suburban commercial uses and has submitted a petition to the City Council of the City of Barnesville for annexation of said land.

Section 3. That the City of Barnesville has, or will, hold a public hearing pursuant to Minnesota Statute § 414.033, subd. 2b, on September 9, 2013, following thirty (30) days written notice by certified mail to all landowners within and contiguous to the area, legally described in Exhibit A, to be annexed.

Section 4. That the corporate limits of the City of Barnesville are hereby extended to include the land legally described in Exhibit A, and shown on the map attached hereto and incorporated herein by reference as Exhibit B, containing approximately 4.93 acres, and the same is hereby annexed to be included within the City of Barnesville, Clay County, Minnesota.

Section 5. That the population of the area legally described in Exhibit A, and hereby annexed is zero (0).

Section 6. That the City Manager of the City of Barnesville is hereby authorized and directed to file a copy of this Ordinance with the Minnesota Office of Administrative Hearings Municipal Boundary Adjustments Office, the Minnesota Secretary of State, the Clay County Auditor, and the Barnesville Township Clerk.

Section 7. That this Ordinance shall be in full force and effect and final upon the date this Ordinance is approved by the Minnesota Office of Administrative Hearings.

Passed and adopted this 9th day of September, 2013.

CITY OF BARNESVILLE

By: 
Its Mayor

ATTEST:


Its City Administrator

EXHIBIT A
Legal Description

The Subject Area to be annexed in the attached Ordinance is legally described as follows:

That certain part of the SE¼ of Section 24, Township 137 North, Range 46 West of the 5th P.M., Clay County, Minnesota, described as follows, to-wit: Commencing at the Southeast corner of the SE¼ of said Section 24, which is the point of beginning; thence North 90° West 479.90 feet; thence North 16°10' West 822.50 feet; thence North 87°33' East 452.50 feet to a point on the West right-of-way line of County #Old 52; which point will hereinafter be referred to as point A; thence Southeasterly along the West right-of-way line of County #Old 52 to its intersection with the South line of said SE¼; LESS the following described two parcels of land contained within the confines of the above description: PARCEL I: That part of the SE¼SE¼, Section 24, Township 137, Range 46, described as follows: Beginning at a point on the Southeast corner of Section 24, Township 137, Range 46; thence North on the East line of said Section 133 feet; thence West 133 feet; thence South 133 feet to the South line of said Section 24, thence East on said Section line 133 feet to point of beginning, less that portion of said property now being used for county and state highway right-of-way purposes, Clay County, Minnesota. PARCEL II: Commencing at point A hereinabove referred to; thence South 87°33' West along a line hereinafter called Course A 452.50 feet; thence South 16°10' East on a line hereinafter called Course B to a point of intersection on Course B with a line 300 feet from and parallel to Course A; thence North 87°33' East along a line parallel to Course A to the intersection of said line with the West right-of-way line of County #Old 52; thence Northwesterly along County #Old 52 to the point of beginning.

EXHIBIT B
Boundary Map

The municipal boundary map referenced in the attached Ordinance, showing the current City of Barnesville and its relation to the Subject Area to be annexed, legally described in Exhibit A, is attached hereto.

Barnesville Improvement District Assessments Area to be Annexed



Legend

-  Barnesville City Limits
-  Sections
-  Parcels
-  Annexation

0 1,000 2,000 4,000
Feet

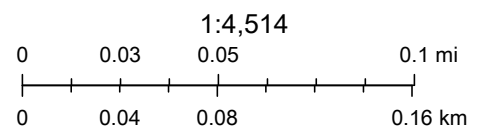


EXHIBIT D
SERVICE AREA MAP

Minnesota Electric Utility Service Areas



10/8/2020, 1:37:47 PM



Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

CERTIFICATE OF SERVICE

I, Patrick Messmer, hereby certify that I have this day caused true and correct copies of the foregoing document to be served on the below list of persons by the method denoted.

Via Electronic Filing:

Minnesota Public Utilities Commission

Via U.S. Mail:

City of Barnesville
PO Box 550
102 Front St. N.
Barnesville, MN 56514
Attn: Mike Rietz, City Administrator

Ohnstad Twichell
444 Sheyenne St., Suite 102
P.O. Box 458
West Fargo, ND 58078-0458
Attn: Lukas Croaker, Esq. and Christopher McShane, Esq.

Minnesota Department of Commerce
85 East Seventh Place, Suite 280
Saint Paul, MN 55101

Minnesota Attorney General's Office
Residential Utilities Division
1400 Bremer Tower
445 Minnesota Street
St. Paul, MN 55101

Dated: October 8, 2020

/s/ Patrick Messmer
Patrick Messmer