MidAmerican Energy Company
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Margaret A. Roy, Senior Attorney

April 3, 2020

Catherine Chiccine
Attorney-Advisor
Environmental Protection Agency Region 7
11201 Renner Blvd
Lenexa, KS 66219

Subject: Council Bluffs, Iowa, manufactured gas plant site
Citizens Gas & Electric Company Superfund Site (IAD984589093)

Dear Ms. Chiccine:

Pursuant to your request, attached please find a copy of the documents MidAmerican Energy Company ("MidAmerican") provided to the Iowa Department of Natural Resources December 11, 2003. The documents show that MidAmerican does not have any liability at the subject site ("Site").

It appears that MidAmerican was named by other potentially responsible parties ("PRPs") on little more evidence than geographic proximity and an implication that an asset acquisition did not mention but yet somehow transferred manufactured gas plant environmental liabilities. MidAmerican and its predecessors never owned the real estate or operated the manufactured gas plant, much less arranged for treatment or disposed of the waste. MidAmerican was drawn into this simply because in 1949 its predecessor purchased a company named Western Iowa Power Company ("WIP"), the sole business of which was distribution of electric power.

Below is a short recitation of the corporate history and an explanation why MidAmerican is not a PRP at this Site. Relevant documents are attached. Where original documents were not found, secondary sources, such as the 1950-era tax litigation pleadings are used.

1903-1917. Omaha Electric Light and Power Co. was the parent company to Citizens Gas and Electric Co. of Council Bluffs ("CGE").

The extent this parent exercised control over the Site operator is not established and the gas production during this period was not found. (Moody's 1928 Nebraska Power Company entry, p. 1 Exh. 1).

1917. Nebraska Power Company ("NPC") replaced Omaha Electric Light and Power.

There is no evidence of Omaha Electric Light and Power's liability as parent to CGE, nor is there evidence establishing whether and how NPC is the successor to the liabilities of Omaha Electric Light and Power. Further, there is no evidence of gas production during this period. (Id.)

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1917–1928. NPC was the parent to CGE.

There is no proof of the level of NPC's control of CGE. (Id.) No information was found that the corporate veil can be pierced or that NPC so controlled the manufactured gas plant operations that it has operator liability. Even if liable, MidAmerican found no evidence of how much contamination was released during this time period. Likewise, MidAmerican found no information as to the level of control exercised by American Power & Light Co. over NPC. (Id.)

1928. CGE sold the site real estate and all equipment to Council Bluffs Gas Company.

Although this is an asset sale, it is clearly the sale of an entire operating business. (Sale agreement dated June 1, 1928 p. 3-5 Exh. 2). The buyer may have also assumed the liabilities under a substantial continuation theory. In any case, the Council Bluffs Gas Company would have any liability for the state of the site and disposal of equipment etc. at the time the site stopped manufacturing gas. At this point, MidAmerican's alleged link to the Site operations ends as MidAmerican is not a successor to Council Bluffs Gas Company.

1937. CGE (now known as Citizens Power and Light Co.) merged with unnamed company.

There is no evidence of this merger. At most the 1945 Moody's summary for NPC says that Citizens Power and Light Co., a former wholly owned subsidiary was "merged" as of June 1, 1937. It does not say merged with who or under what terms. (Moody's 1945 p. 1 Exh. 3). As stated above, the manufactured gas plant had been sold years earlier.

1944. The Omaha Electric Committee ("OEC") bought the NPC stock for the ultimate benefit of Omaha Public Power District ("OPPD").

On December 26, 1944, OEC (formerly known as Central West Irrigation Co.) purchased all the NPC stock from American Power & Light Co. (Moody's 1945 p. 1 Exh. 3). The "sole purpose" of OEC was to be a vehicle to acquire electric distribution assets for a political subdivision of Nebraska. OPPD is the acknowledged beneficiary of OEC and OEC could only operate at the direction of OPPD. (OPPD Eighth Circuit Brief p. 32-33, Exh. 4).

Nov. 14, 1946 – Dec. 2, 1946. OEC formed its subsidiary WIP. WIP bought 77,000 shares of its sister company NPC's stock from OEC and paid for them with WIP bonds.

This portion (77,000 shares) of NPC stock is a minority position (7.7%). There is no evidence that Iowa environmental liabilities somehow were segregated and apply only to these shares. There is no indication that Nebraska law required that Iowa-based liabilities could not be held by a Nebraska public utility.

OPPD was heavily involved in this transaction. In a 1951 claim for taxes, OPPD stated that it "assumed all of the obligations, and received all of the rights of Nebraska Power Company under the contract of November 30, 1946, between Nebraska Power Company and Western Iowa Power Company." (OPPD January 1951 tax claim, para. 7 Exh. 5). There is no carve-out for Iowa based liabilities.

December 2, 1946. OEC planned and executed a partial liquidation of NPC, having WIP trade its 77,000 NPC shares for NPC's Iowa assets.

WIP held the NPC stock for less than 24 hours. (Agreement OEC-OPPD dated December 2, 1946 p. 3 Exh. 6). It does not make sense that WIP is liable because of this stock ownership, when prior NPC shareholders, including American Power & Light Co. (owned NPC until 1944) and OEC (owned NPC 1944-1946 for the benefit of OPPD) are not so liable.

In the end, WIP was given specific assets and liabilities. The NPC liquidation plan stated that WIP would receive NPC assets less certain liabilities which would be assumed by WIP, consisting of:

> accounts payable, accrued taxes, customers' advances, customers' contributions, customers' deposits and accrued interest thereon, other current liabilities and reserve for injuries and damages, the excess of such assets over such liabilities to equal the net aggregate amount of $35,000, all as selected and determined by Haskins & Sells and R.W. Beck and Associates.

(WIP directors meeting minutes December 2, 1946, p. 4 Exh. 7). This specific list does not include historic MGP site liabilities and certainly the parties to the transaction would not have allowed additional unstated liabilities to be transferred when they so carefully listed the liabilities to be transferred. <u>This was an asset, not stock transaction and therefore only the assets and liabilities listed were transferred to WIP</u>.

It is important to note how closely OEC controlled both NPC and WIP for the benefit of OPPD. (OPPD complaint, filed August 4, 1952, para. 20, 24-26. Exh. 8). Further, all the WIP assets and liabilities received related to distribution of electricity, as NPC at this time was engaged in electric distribution only. (OPPD Eighth Circuit Brief p. 32-33, Exh. 4).

1949. Iowa Power and Light Company purchased all the shares of WIP from OEC.

Iowa Power and Light purchased an electric distribution system. The MGP site was not part of the purchase; as stated above it had been sold 20 years earlier. (Moody's 1945 p. 1 Exh. 3).

In the purchase agreement, OEC warranted that the financials correctly reflected WIP's financial condition. There is no reference to manufactured gas-related environmental liabilities. (Agreement between Omaha Electric Committee and Iowa Power and Light Company February 11, 1949 p. 5-8, 21-24 Exh. 9). OPPD assumed the OEC's obligations under the contract and received OEC's net assets. <u>Id</u>. at 21. There is no support presented for the argument that OEC and OPPD could not hold out-of-state liabilities under their governing statutes. Iowa Power and Light purchased an electric distribution system, not MGP liabilities.

May 14, 1949. Iowa Power and Light Company dissolved WIP.

At dissolution Iowa Power and Light Company received all of WIP's property and assets and agreed to assume "operation of the utility properties thus acquired, and . . . all obligations of Western Iowa under all executory contracts, unexpired leases, and other undertakings of Western Iowa." (Minutes of the special meeting of the Board of Directors of WIP, May 14, 1949, p. 4-5 Exh. 10). Historic manufactured gas plant liabilities are not "executory contracts, unexpired leases or other undertakings of Western Iowa." Therefore, Iowa Power and Light Company, MidAmerican's predecessor, was never liable for the Council Bluffs manufactured gas plant liabilities. As to claims against WIP as a dissolved corporation, Iowa law allows such corporations to 'wind up' their affairs, yet surely 50+ years is far too long to be considered "winding up." See Iowa Code section 491.56.

For the reasons stated above, MidAmerican denies liability at this site. Besides the potentially responsible parties identified in the general notice letter, MidAmerican suggests inquiry be made to the successors to American Light and Power Co. and OEC.

If you have any questions, please feel free to contact me.

Sincerely,

Peg Roy

Peg Roy
Senior Attorney

Attachments

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Table A.—Bond Records and Ratings (Based on Five Year Income Results, Etc.)

Name of Issue	Date of Last Payment	Maturity	Authorized	Outstanding	Average Income Available	Interest Required Per Annum	Factor of Safety	Basis for Rating: Security	Basis for Rating: Salability	Net Rating
1. Kansas Gas & [illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	Good	Good	Ba[illegible]

Note: [illegible] income account, an[illegible] facts kept in mind, the conservatism of the factor of safety and rating will be apparent. For definitions and key t[illegible] ratings, see pages [illegible]

REFERENCE NOTE ON BOND ISSUE

1. Dated March 1, 1910; due March 1, 1922; int. paid at Guaranty Trust Co., New York. Coupon, $1,000. Callable on any interest date on four weeks' notice, at 105 and int. up to Dec. 31, 1917; during 1918 at 104; during 1919 at 103; during 1920 at 102, and during 1921 at 101. A cash improvement fund began in 1913 and requires payment to the trustee from March 1, 1913, to March 1, 1915, of 1% per annum; from 1916 to 1918, 2% per annum; from 1919 to 1921, 3% per annum of all bonds outstanding, except that the maximum remains at 2% in any twelve months that the net earnings of the company and the Home Light, Heat & Power Co. equal or exceed three times the interest charges on all outstanding bonds. This improvement fund is to be expended by the trustee for betterments, etc. Of the bonds not issued further amounts may be sold for improvements up to 80% of the cash cost, provided that the net earnings of the company and the Home Light, Heat & Power Co. shall aggregate at least twice the annual interest charges. The bonds are secured by first lien on all property and by pledge of all outstanding bonds and stock of the Home Light, Heat & Power Co. Company pays normal income tax.

Table B.—Stock Records and Ratings (Based on Five Year Income Results, Etc.)

Name of Issue	Date of Dividend	Amount Outstanding	Average Income Available	Dividend Requirement	Factor of Safety	Basis for Rating: Equity	Basis for Rating: Salability	Net Rating
1. Kansas Gas & Elec. 7% cum. pfd	7% Qu.	$1,000,000	$284,156	$133,000	33%	Fair	Fair	Ba.
2. Kansas Gas & Elec. com	Nil	3,000,000	151,156	None	.....	.....	.....	Caa.

Note: Average income available on stock issues is the average surplus, after deducting all fixed and other charges, for last five years shown in income account. Dividend requirement is the requirement at the current rate on the present amount outstanding. For key to ratings, see pages 11 to 18.

REFERENCE NOTES ON STOCK ISSUES

1. Authorized, $2,500,000; par $100. Has preference as to both assets and dividends and is callable on any dividend date at 115 and accrued dividends. Full rate has been paid since July 1, 1910, payments being made quarterly January.

2. Authorized, $3,000,000; par $100. All owned by American Power & Light Co. Transfer agents, Guaranty Trust Co., New York, and Fidelity Trust Co., Kansas City, Mo.

NEBRASKA POWER COMPANY

(Controlled by American Power & Light Co.)

History: Incorporated under laws of Maine, April 23, 1917, as successor company to Omaha Electric Light & Power Co., incorporated June 25, 1903, which company controlled the Citizens' Gas & Electric Co., of Council Bluffs, Iowa, and New Omaha, Thomson-Houston Electric Light Co. Franchise extension has been pending in courts, but decision of U. S. Supreme Court in June, 1913, held that the company has a perpetual franchise. Population served in Omaha, about 181,000. Sol Subsidiaries: Citizens Gas and Electric Co. of Council Bluffs. Supplies entire electric light, power and gas service in Council Bluffs, Iowa, serving about 31,000.

Management: Officers: S. H. Harries, Pres.; W. D. McHugh, W. M. Burgess, E. W. Hill, G. E. Claflin, Vice-Pres.; J. E. Davidson, Vice-Pres. and Gen. Mgr.; S. E. Schweitzer, Sec. and Treas.; E. G. Cleminson, M. H. Arning, W. C. Lang, Asst. Sec. and Asst. Treas. Directors: W. M. Burgess, G. H. Harries, G. W. Holdrege, J. H. Millard, W. D. McHugh, C. E. Yost, Joseph Barker, T. C. Byrne, G. E. Claflin, J. E. Davidson, Gould Dietz, A. S. Grenier, E. W. Hill, A. E. Smith, F. G. Sykes. Main Office: Omaha, Neb. Boston Office: Ames Bldg.

Operating Statistics

	Dec. 31, 1917	Dec. 31, 1916
Electric customers	31,264	28,833
Kilowatt generating capacity	31,500	18,000
Kilowatt-hour feeder output for 12 months	66,053,000	58,053,000
Miles of overhead distributing lines	500	475
Miles of underground distributing lines	23	18

Comparative Income Account, Years Ended Dec. 31

	1917	1916	1915	1914	1913	1912
Gross revenues	$1,706,068	1,593,033	$1,425,795	$1,299,731	$1,227,767	$1,105,680
Operating expenses }	1,030,353	913,594	{ 741,748	718,316	669,386	606,364
Depreciation }			{ 200,000	200,000	158,333	150,000
Net revenues	$675,715	$679,439	$484,047	$381,415	$400,048	$349,316
Interest	177,957	113,807	117,422	113,362	114,201	115,724
Balance	$497,758	$565,632	$366,625	$268,053	$285,847	$233,592
Margin of safety	**74%**	**83%**	**75%**	**70%**	**71%**	**67%**

Note: [illegible] charges, including interest on permanent and [illegible] sinking funds, etc. Wherever possible, taxes and depreciation items are deducted [illegible] the amounts outstanding at the close of the fiscal year.

General Balance Sheet, as of Dec. 31, 1917

Assets		Liabilities	
Plants	[illegible]	[illegible]	$3,520,00[illegible]
[illegible]	[illegible]	[illegible]	1,000,000
[illegible]		[illegible]	[illegible]
Sinking [illegible]	[illegible]	[illegible]	3,000,000
Suspense	[illegible]8,728	Two year 5% notes	1,500,000
		[illegible]	1,732,641
		[illegible]	1,067,513
		[illegible]	115,167
Total	[illegible]	Total	$16,915,321

Table A.—Bond Records and Ratings (Based on Five Year Income Results, Etc.)

[illegible]	Interest [illegible]	[illegible]	[illegible]	[illegible]	Average Income Available	Interest Required Per Annum	Factor of Safety	Basis for Rating: Security	Basis for Rating: Salability	Net Rating
1. Omaha El. Lgt. & Pr. 1st 5s	J&J	Jul 1933	$3,000,000	$3,000,000	$[illegible]	$150,000	72%	High	Fair	A.

Note: Average income available is average for last five years shown in income account. Interest requirement is amount required to cover interest on bonds now outstanding. For key to ratings, see pages 11 to 18.

REFERENCE NOTE ON BOND ISSUE:

1. Dated July 1, 1903; due July 1, 1933; interest paid at Old Colony Trust Co., Boston. Coupon, $1,000. Callable at 105. Sinking fund [illegible] of gross earnings. Direct lien on [illegible]. Company pays normal income tax.

Note: [illegible] $1,[illegible]00,000 ten year [illegible] the Nebraska Power Co.

Capital Stock: Authorized and outstanding, $1,500,000 7% preferred; $1,000,000 7% second preferred and $5,000,000 common; par $100. American Power & Light Co. owns all the second preferred and a majority of the common.

PACIFIC POWER & LIGHT COMPANY

(Controlled by American Power & Light Co.)

History: Incorporated June 16, 1910, under the laws of Maine, to own and operate electric light and power, electric street railway and gas and water works properties. In 1910 acquired electric light and power, gas and street railway properties in Washington, Oregon and Idaho owned by the Northwestern Corporation of Philadelphia, the Northwest Light & Water Co., the Yakima Valley Power Co., the Astoria Electric Co., and the Wasco Warehouse Milling Co. Also acquired stock of the Walla Walla Valley Ry. Co. As of April 30, 1911, it took over the property of the Hood River Light & Power Co., Husum Power Co., Klickitat Light & Power Co., Tucannon Power Co., Dayton Elec. Co., Waitsburg Electric Light Co., Prosser Water Co. and the Prosser Power Co., and the stock of the Reservation Electric Co. The fee title to all the properties except the Walla Walla Valley Ry. Co. is now in the name of the Pacific Power & Light Co. Company furnishes electric light and power service to 43 communities, gas service to 7, railway service to 2, interurban railway service to 3 and water service to 4 communities.

Franchises: Franchises, with unimportant exceptions, are either unlimited as to time or extend for a long period.

Population Served: Population served estimated at approximately 128,000.

Management: OFFICERS: S. Z. Mitchell, Chairman of Board; Guy W. Talbot, Pres.; F. G. Sykes, G. E. Claflin, E. W. Hill, Edward Cookingham, A. S. Grenier, J. A. Laing, Vice-Presidents; Geo. F. Nevins, Sec. and Treas.; M. H. Arning, M. E. Corbin, W. C. Lang, Asst. Treas. and Asst. Sec. DIRECTORS: J. C. Ainsworth, Edward Cookingham, Fred S. Fogg, S. S. Gordon, A. S. Grenier, William Jones, John A. Laing, C. Hunt Lewis, H. C. Lucas, S. Z. Mitchell, Miles C. Moore, Josiah Richards, F. G. Sykes, Guy W. Talbot. ANNUAL MEETING: Third Tuesday in February. MAIN OFFICE: 71 Broadway, New York.

Operating Statistics, Years Ended Dec. 31

	1917	1916	1915	1914
Electric customers	22,869	20,786	17,960	16,572
Gas customers	7,744	7,149	6,712	6,366
Water customers	5,406	4,935	4,752	4,680
Total customers	36,019	32,870	29,424	27,618
Kilowatt generating capacity	20,515	20,500	20,125	18,500
Kilowatt hour feeder output for twelve months	54,435,604	41,182,945	39,389,430	35,863,259
Miles of electric distributing lines in service	875	860	845	777
Miles of high voltage transmission lines in operation	502	485	470	463
Gas holder capacity (cubic feet)	439,500	439,500	439,500	439,500
Artificial gas output (cubic feet) for twelve months	146,146,000	132,257,100	127,044,000	124,162,000
Miles of street railway and interurban railway lines in operation	33	31.5	31.5	30.5
Miles of gas mains	135	132	130	126
Miles of water mains	95	95	92	91

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KNOW ALL MEN BY THESE PRESENTS, That CITIZENS GAS & ELECTRIC COMPANY OF COUNCIL BLUFFS, a corporation organized and existing under the laws of the State of New Jersey and duly qualified to transact business within the State of Iowa, pursuant to resolutions duly passed by its stockholders and its Board of Directors, for and in consideration of the sum of Ten Dollars ($10) and other good and valuable considerations, receipt whereof is hereby acknowledged, has sold and conveyed, assigned, transferred and delivered, and by these presents does hereby sell and convey, assign, transfer and deliver unto COUNCIL BLUFFS GAS COMPANY, a corporation organized and existing under the laws of the State of Delaware and duly authorized to transact business in the State of Iowa, the following described property, situated in the County of Pottawattamie and State of Iowa, to wit:

PARCEL I

That part of Lot Five (5) in Block Three (3) of Bryant and Clark's Subdivision in the City of Council Bluffs, County of Pottawattamie and State of Iowa, described as follows:

Commencing at the Northwest corner of said Lot Five (5) and running thence Southerly along the Westerly line of said Lot Five (5) a distance of twenty-five (25) feet; thence Easterly at right angles to said Westerly line a distance of twenty (20) feet; thence Northerly, parallel with said Westerly line of said Lot Five (5) a distance of twenty-five (25) feet to the Northerly line of said lot; thence Westerly along the Northerly line of said lot twenty (20) feet to the place of beginning

PARCEL II

The South Half (S½) of Lot Three (3), all of Lots Four (4), Five (5), Six (6) and Seven (7), the South twenty-two and two-thirds (22 2/3) feet of Lot Eight (8), the South Half (S½) of Lot Eleven (11) and all of Lots Twelve (12), Thirteen (13) and Fourteen (14), all in Block Twelve (12) in the Subdivision of the Riddle Tract in Council Bluffs, Iowa, also known as Riddle's Subdivision in Council Bluffs, Iowa.

PARCEL III

Lots Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12) and Thirteen (13) and the South ten (10) feet of Lot Fourteen (14), all in Block Eleven (11) of the Subdivision of the Riddle Tract in Council Bluffs, Iowa, also known as Riddle's Subdivision, in Council Bluffs, Iowa.

PARCEL IV

That certain tract or parcel of land constituting vacated alleys lying in Riddle's Subdivision of the City of Council Bluffs, Iowa, vacated by ordinance passed May 7, 1928, approved May 9, 1928, described as follows:

(a) Those portions of the vacated alleys lying South of a line one hundred forty-six (146) feet North of and parallel to the South line of Block Eleven (11) in Riddle's Subdivision of the City of Council Bluffs, Iowa, said vacated alleys being more particularly described as:

The vacated alley lying between the South line of Lots Seventeen (17) to Twenty (20) inclusive, and the North line of Lots Seven (7) to Ten (10) inclusive, and West of the East lines of Lots Seven (7) and Twenty (20), extended and joined; the vacated alley lying between the East line of Lots Eleven (11) to Sixteen (16) inclusive and the West line of Lots Seventeen (17) and Ten (10), extended and joined;

(b) Those portions of the vacated alleys lying South of the center lines of Lots Three (3) and Eleven (11), extended and joined, in Block Twelve (12) in Riddle's Subdivision of the City of Council Bluffs, Iowa, being more particularly described as:

That portion of the vacated alley lying between the West line of Lots One (1) to Six (6), inclusive and the East line of Lots Seven (7) and Eight (8) and the vacated alley lying between the East line of Lots Nine (9) to Fourteen (14) inclusive and the West line of Lots Seven (7) and Eight (8), all in Block Twelve (12) in Riddle's Subdivision aforesaid;

(c) That portion of the West Half (W½) of the vacated alley lying between the Westerly lines of Lots Four (4), Five (5) and Six (6) and the Easterly line of Lot Seven (7) and South of the Northerly line of Lot Seven (7), prolonged Eastward, in Block Eleven (11), Riddle's Subdivision of the City of Council Bluffs, Iowa, the center line of said alley being the Westerly line of the buildings and projections of the Mona Motor Oil Company located in said vacated alley on May 12, 1928.

PARCEL V.

The gas manufacturing plant and plant site of the grantor in the City of Council Bluffs, including all gas holders, expansion tanks, gas mains, buildings and structures located upon the tracts of land above described, and all the grantor's easements, rights of way, rights, permits, privileges, licenses, machinery, engines, equipment, appliances and appurtenances forming a part of the said plant or site or used or enjoyed in connection therewith.

PARCEL VI.

The gas distributing system of the grantor in, and in the vicinity of, the City of Council Bluffs, including all gas holders, expansion tanks, tunnels, conduits, gas mains and pipes, service pipes, fittings, gates, valves, connections, meters, appliances, devices, equipment and appurtenances and all grantor's other property, real, personal or mixed, used or enjoyed in connection with said distributing system, whether used for the distribution of natural, artificial or mixed gas, together with all rights of way, easements, permits, privileges, municipal or other franchises, licenses, consents and rights for or relating to the construction, maintenance or operation thereof, through, over, under or upon any public streets or highways or any public or private lands in, and in the vicinity of, said City of Council Bluffs.

PARCEL VII.

All the railroad tracks of the grantor in said City of Council Bluffs, used in or in connection with the manufacture, sale and distribution of gas by the grantor in said City, together with all spur tracks, switches, sidings, rails, ties, appurtenances and equipment, rights of way, easements, contracts, permits and consents appertaining thereto, and all grantor's right, title and interest in and to the lands upon which the same are

situated.

PARCEL VIII.

All those certain rights, privileges and franchises now owned and held by the grantor for the construction, maintenance and operation of the gas plant and system in, and in the vicinity of, the City of Council Bluffs, including those granted by that certain franchise granted to Grantor, its successors and assigns, by the City of Council Bluffs, Iowa by ordinance adopted by the City council of said City on October 1, 1923, (said ordinance being document 2551, of the Ordinances of the City of Council Bluffs, Iowa), and subsequently approved on October 2, 1923 by the Mayor of said City, and which subsequently received the favorable vote of a majority of the electors of the City of Council Bluffs voting upon the question at a special election held for that purpose.

PARCEL IX.

All furniture, fixtures, equipment, tools, supplies, stores, material, fuel, merchandise, motor vehicles, horses, mules, wagons and transportation equipment owned by the grantor and used exclusively in, or exclusively in connection with, the manufacture, sale and distribution of gas in, and in the vicinity of, said City of Council Bluffs, County of Pottawattamie, State of Iowa.

The grantor hereby warrants the title against all persons whomsoever.

IN WITNESS WHEREOF the said Citizens Gas & Electric Company of Council Bluffs has caused these presents to be signed by one of its Vice-Presidents and attested by one of its Assistant Secretaries and its corporate seal to be

hereto affixed, this 1st day of June, A.D. 1928.

CITIZENS GAS & ELECTRIC COMPANY
OF COUNCIL BLUFFS

By A S Grenier
Vice-President.

Attested:

H L Martin
Assistant Secretary.

STATE OF NEW YORK)
) SS
COUNTY OF NEW YORK)

On this 1st day of June, A.D.1928, before me, MARY J. GUILFOYLE , a notary public in and for said County in the State aforesaid, personally appeared A. S. GRENIER and H. L. MARTIN, to me personally known and to me known to be a Vice-President and an Assistant Secretary, respectively, of CITIZENS GAS & ELECTRIC COMPANY OF COUNCIL BLUFFS, who being by me severally and duly sworn, each for himself did say that he, the said A. S. GRENIER, is a Vice-President, and he, the said H. L. MARTIN, is an Assistant Secretary of said CITIZENS GAS & ELECTRIC COMPANY OF COUNCIL BLUFFS, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that the said instrument was signed and sealed on behalf of the said corporation by authority of its Board of Directors, and the said A. S. GRENIER and H. L. MARTIN have acknowledged the execution of said instrument to be the voluntary act and deed of said CITIZENS GAS & ELECTRIC COMPANY OF COUNCIL BLUFFS, by it voluntarily executed.

WITNESS my hand and notarial seal this 1st day of June, A.D.1928.

Mary J. Guilfoyle.
[illegible] County Clerk's No. [illegible] Register's No. [illegible]
Bronx County Clerk's No. [illegible] Register's No. [illegible]
Commission Expires March [illegible], [illegible]

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Assets (cont'd.)	1944	1943
Dep. with trust	.....	477
Receiv., net	179,912	165,842
Applian. leased	1	1
Mat. & supplies	131,039	172,266
Prepd. & def. chg.	1,340	3,857
Bond disc. & exp	117,587	120,527
Total	$9,223,805	$9,201,525
Liabilities		
6% pref. ($100)	$1,500,000	$1,500,000
Com. stock ($25)	[illegible]	[illegible]
Funded debt	2,619,000	2,650,000
Curr. & Accr. Liab.		
Ser. bonds due	.....	100,000
Accts. payable	68,536	94,840
Due to affil. cos	13,476	7,189
Taxes accrued	258,991	254,391
Int. accr., etc.	10,223	10,724
Deprec. & amort. res.	1,835,339	1,700,530
Consumers' dep.	116,359	105,027
Other reserves	76,931	70,693
Earned surplus	722,295	627,432
Total	$9,223,805	$9,201,525
Current assets	$566,643	$725,517
Curr. & accr. liab	343,356	547,445
Net curr. assets	223,289	178,072

(1)Property, plant, gas well and equipment including intangibles—at cost, subject to amortization and depreciation—of which $671,364 was satisfied by issuance of stock).

Accounts certified by Peat, Marwick, Mitchell & Co.

Bonded Debt: 1. Northwestern Utilities, Ltd. first sinking fund 4½s, series A, due 1959:

AUTHORIZED—Not to exceed $5,000,000 bonds at any one time outstanding; outstanding, series A, 4½s, Dec. 31, 1944, $2,619,500 (included $635,000 second series).

DATED—June 1, 1939.

MATURITY—June 1, 1959.

INTEREST PAID—J&D 1. Principal and interest payable in lawful money of Canada in any branch in Canada (except the Yukon Territory) of the company's bankers.

TRUSTEE—Montreal Trust Co., Toronto.

DENOMINATION—Coupon, $500 and $1,000; registerable as to principal; fully registered, $1,000 and multiples.

CALLABLE—As a whole or in part at any time prior to maturity on any interest date on 30 days' notice at 103 to June 1, 1949, incl.; thereafter at 102 to June 1, 1954, incl., and thereafter prior to maturity at 101. Bonds may also be retired for the sinking fund (which see) at 101 to June 1, 1949, incl., and at 100½ thereafter and prior to maturity.

SINKING FUND—Semi-annually beginning Dec. 1, 1944 of $47,500 plus amount equal to interest on bonds previously retired through the sinking fund, estimated sufficient to retire entire issue by maturity. Second series A: Semi-annually J&D 1, commencing Dec. 1, 1944, of $15,400 plus a sum equal to semi-annual interest which would have been payable on all sinking fund bonds of second series theretofore purchased or redeemed through sinking fund if same had been kept alive.

SECURITY—A first fixed and specific mortgage and charge on all the lands, rights-of-way, easements, leases, rights, concessions and franchises of the company and all other immovable property of every description now or hereafter owned or acquired (but excepting rights of company in respect of recovery and/or disposal of any petroleum or petroleum products under lands of the company) and a floating charge on company's undertaking and all its properties and assets, present and future.

DIVIDEND LIMITATIONS — No dividends may be paid on preferred stock if earned surplus would be reduced below $250,000 and no dividend on any stock, except 6% preferred, except out of available earnings made subsequent to Jan. 1, 1939, and then only if certain requirements are maintained with respect to net current position.

ADDITIONAL BONDS—May be issued (but aggregate of all bonds outstanding at any one time must not exceed $5,000,000) to the extent of 60% of fair value of additional property and subject to requirements as to net earnings.

PURPOSE—Issued to retire first 6% bonds, series A and first 5½% bonds, series B and for other purposes. Second series issued to retire first 4½s B, 1959 and for other corporate purposes.

OFFERED—($841,000) at 100 (Canadian funds) in Canada in May, 1939, by Nesbitt, Thomson & Co., Ltd., Montreal. $1,159,000 sold privately. $650,000 at 98 (Canadian funds) in July, 1942 by Nesbitt, Thomson & Co., Ltd., Montreal.

PRICE RANGE—	1944	1943	1942	1941	1940
High	101	100	98	95	99
Low	99	98	93½	92	98

(1)Canadian funds.

Capital Stock: 1. Northwestern Utilities, Ltd. 6% cumulative participating preferred; par $100:

AUTHORIZED — 20,000 shares; outstanding, 15,000 shares; par $100.

PREFERENCES—Has first preference as to assets and cumulative dividends and, after common has received $4 per share, is entitled to an additional dividend of $1 per share. In liquidation entitled to $100 and dividends.

CALLABLE—As a whole on any dividend date on 30 days' notice at 105. Company may also purchase all or any part of outstanding preferred stock in the market or by tender or otherwise at not exceeding 105.

VOTING RIGHTS—Has no voting power except on default of dividends for one year, when it is entitled to one vote per share—such right to cease upon payment of such arrears.

DIVIDEND RESTRICTIONS—See description of first 4½s, due 1959 above.

ADDITIONAL STOCK—Of the 6% preferred stock, not more than 15,000 shares may be issued unless net earnings for twelve consecutive months out of fifteen months next preceding are at least equal to twice dividend requirements on preferred outstanding and to be issued.

So long as preferred is outstanding, company may not hereafter issue any bonds, debentures or debenture stock and/or make any mortgage on its property, except with consent of holders of three-fourths of preferred; however, company may, without such consent, issue bonds, debentures or debenture stock and/or make any mortgage on its property (the aggregate of (1) bonds, debentures and/or debenture stock proposed to be issued; (2) bonds, debentures and/or debenture stock issued after Jan. 1, 1934, and outstanding; (3) the principal amount to be secured by any such mortgage or charge (not being a mortgage or charge to secure any bonds, debentures and/or debenture stock of the company) proposed to be made; (4) the principal amount for the time being owing under and secured by such mortgages or charges (not being mortgages or charges to secure any bonds, debentures and/or debenture stock of the company), if any, made after Jan. 1, 1934, do not together exceed total of following amounts: (a) $1,500,000 payable in lawful money of Canada, and (b) such additional amounts in lawful money of Canada and/or other currencies required to refund and/or retire by acquiring and/or redeeming first mortgage 15-year bonds dated June 1, 1934.

DIVIDENDS—Regular dividends paid quarterly, March 1, etc., to stock of record about Feb. 25, etc.

PURPOSE—Issued May, 1936, pursuant to recapitalization (for details, see Moody's 1938 Public Utility Manual).

1,500 shares sold in 1941 to finance in part new construction work.

2. Northwestern Utilities, Ltd. common; par $25:

AUTHORIZED—120,000 shares; outstanding, Dec. 31, 1944, 80,000 shares; par $25 (changed from no par May 2, 1936, on basis of 1/10 new $25 par share for each old no par share).

OWNED—All owned by International Utilities Corp.

VOTING RIGHTS—Has sole voting rights with restrictions (see No. 1 above).

DIVIDEND RESTRICTIONS—See first 4½s, 1959 above.

PURPOSE—Issued in May, 1936, pursuant to recapitalization, holders of old 8% preference shares receiving 3.6 new common shares for each share held and holders of old common stock receiving 1/10 of a new common share for each share held.

20,000 shares sold in 1941 at par; proceeds used to finance in part new construction work.

DIVIDENDS PAID—

On $25 par shares:

1937	Nil	1938	$1.50	1939	$2.50
1940	2.40	1941	1.47½	1942	2.00
1943	2.25				

TRANSFER AGENT AND REGISTRAR — Stock transferred and registered at company's office.

NEBRASKA POWER COMPANY

CAPITAL STRUCTURE

FUNDED DEBT

Issue	Rating	Amount Outstanding	Times Charges Earned 1944	1943	Interest Dates	Call Price	Price Range 1944	1932-44
1. First mtge. 4½s, due 1981	Aa	$16,500,000	3.44	3.20	J&D	(1)105	111-106½	112 -83
2. Debenture 6s, A, 2022	A	3,500,000			M&S 1	(1)---	120-114⅞	128½-70¼

CAPITAL STOCK

Issue	Par Value	Amount Outstanding	Earned per Sh. 1944	1943	Divs. per Sh. 1944	1943	Call Price	Price Range 1944	1932-44
1. 7% cumulative preferred	$100	51,952 shs.	$21.93	$21.83	$7.00	$7.00	110	114 -105¾	117½-81
2. 6% cumulative preferred	100	22,561 shs.			6.00	6.00	110	106½-104	115 -72
3. Common	no par	1,008,600 shs.	1.14	1.13	0.20	0.20	---	----------	---------

(1)At 110 on and after Sept. 1, 1947. (2)To June 1, 1946, incl., when price changes.

HISTORY

Incorporated under laws of Maine April 23, 1917 as successor company to Omaha Electric Light & Power Co., incorporated June 19, 1903. Citizens Power & Light Co. (formerly Citizens Gas & Electric Co. of Council Bluffs, Iowa), former wholly-owned subsidiary, was merged as of June 1, 1937. The gas property of the Citizens Gas & Electric Co. of Council Bluffs, Iowa, was sold in June, 1928, the name subsequently being changed to Citizens Power & Light Co.

CONTROL

On Dec. 26, 1944, Central West Irrigation Co. (name later changed to Omaha Electric Committee, Inc.), a non-profit corporation organized under the general corporation laws of Nebraska Dec. 8, 1944, acquired entire outstanding common stock of Nebraska Power Co. from American Power & Light Co. for approximately $14,421,000. This is the first step in a plan of conversion to public ownership by a political sub-division of the State of Nebraska.

MANAGEMENT

Officers

T. H. Maenner, Chairman
J. E. Davidson, President
Roy Page, Vice-President & Gen. Mgr.
F. E. Smith, Vice-Pres. & Asst. Gen. Mgr.
S. J. Cullingham, Vice-President
W. W. Wenstrand, Secretary
Gerald Collins, Treasurer
F. J. Morlan, Asst. Sec. & Asst. Treas.
T. F. Hanley, Asst. Sec. & Asst. Treas.

Directors

Dr. D. H. Baer, Ashland, Neb.
Gerald Collins, Omaha
Sidney J. Cullingham, Omaha
J. E. Davidson, Omaha
Gould Dietz, Omaha
W. C. Fraser, Omaha
T. H. Maenner, Omaha
Reed O'Hanlon, Blair, Neb.
Dennis Radford, Jr., Omaha
Bernard R. Stone, Omaha
W. W. Wenstrand, Omaha
Emil E. Wolf, North Bend, Neb.
Ernest L. McLean, Augusta, Me.
George H. Hunt, Augusta, Me.

Annual Meeting: First Monday in April at Augusta, Me.

Auditors: Arthur Andersen & Company.

General Office: Omaha 2, Nebraska.

BUSINESS

Provides electric power and light service in Omaha and 28 adjacent communities in eastern Nebraska and in Council Bluffs and 8 other communities in Iowa. The population of the territory served is estimated at 353,000. Industries supplied with electric power and light service include flour milling establishments, grain elevators, packing plants, lead reduction works, foundries and machine shops, woodworking shops and numerous other enterprises.

The City of Omaha (1940 population 223,185) is the largest city in the state and ranks first in value of manufactures. It is an important railway center and has an extensive trade in agricultural and manufactured products. Chief industries in Council Bluffs (1940 population 41,443) are the manufacture of agricultural implements and supplies, car wheels and railway equipment, artificial ice and machinery, passenger and freight elevators, drugs and hardware.

PHYSICAL PROPERTIES

Physical property owned and operated by the company includes total installed electric generating capacity of 111,500 k.w., and 4,343 miles of electric lines. Company has 102 miles of 66,000 volt transmission lines which surround the City of Omaha. On Aug. 12, 1942, an interconnection of electric systems of the company and Kansas Gas & Electric Co. was completed, which consists of a 154,000 volt transmission line with approximate capacity of 40,000 k.w.

Principal generating plants are:

Omaha—Installed generating capacity 108,500 k.w.; last unit installed in 1937; net station output in 1944, 496,503,200 k.w.h.; 1943, 388,337,100 k.w.h.; 1942, 319,818,700 k.w.h.; 1941, 360,424,600 k.w.h.; fuel cost per k.w.h. generated—3.20 cents.

South Omaha—Installed generating capacity 3,000 kw.; constructed in 1938; last unit installed in 1938; net station output in 1944, 41,651,700 k.w.h.; 1943, 43,752,800 k.w.h.; 1942, 38,183,800 k.w.h.; 1941, 36,496,300 k.w.h.

FRANCHISES

The United States Supreme Court has held that the company possesses a franchise right, unlimited as to time, to distribute electricity for light, heat and power purposes in the City of Omaha. The major portion of the company's revenue is derived from the territory covered by this franchise.

On Feb. 12, 1945, the Omaha City Council had adopted a resolution declaring that the franchise under which the company serves the City of Omaha has been forfeited. In the opinion of counsel, company has a franchise in perpetuity and therefore the resolution of the City Council is invalid and of no effect.

REGULATION

[illegible] subject to limited regulation by [illegible] Service Commission of Ne[braska] [illegible] regarding state regulation, see Moody's Regulation Chart (blue insert). As a subsidiary of a registered holding company, [illegible] is subject to [illegible] Securities & Exchange Commission.

RESIDENTIAL RATES

[illegible]

[illegible] specified provisions.

Available in remaining portion of the territory. Effective date Nov. 1, 1941. Shown as net rates (gross in parentheses):
$1.00 ($1.05) for first 12 k.w.h. or less.
[illegible] per k.w.h. next 40 k.w.h.
3¢ (3 1/6¢) per k.w.h. next 150 k.w.h.
[illegible] per k.w.h. all additional k.w.h.
Net rates apply if paid within [illegible]

LITIGATION

The 1943 Legislature of Nebraska enacted a law giving the City of Omaha the right to [illegible] power commission [illegible] authority to acquire, either by purchase or [illegible], the electric system serving the [illegible] area. This legislation was initiated at the instance of the Omaha City Council, to provide a vehicle to take over the [illegible] company's property [illegible] public power district.

The law as enacted provides that a public power district cannot acquire the property of [illegible] and the further fact that both the [illegible] and its controlling stockholder, American Power & Light, announced that they had neither desire nor intention to sell the company, and although the sentiment of [illegible] of Omaha evidently is favorable [illegible] Omaha's only daily paper initiated a campaign to force company's property into municipal ownership.

When it appeared probable that the Omaha City Council would appoint a "people's power commission", there was circulated in Omaha an initiative petition, asking the City Council either to take no action or to submit the question to a vote of the people. Although only [illegible] signatures were needed, there were obtained 68,885 signatures (two-thirds of the qualified electorate) to this petition. The City Council, nevertheless, on advice of its legal [illegible] disregarded the petition and appointed a commission. Immediately, a referendum petition was circulated, again asking the Council to put the question to a vote. But this petition, with 26,126 signatures (only 4,000 were required), was also disregarded.

[illegible] petitioners, not satisfied [illegible] of the City Council, filed suit in the District Court of Douglas County, Nebraska, asking that the Council be "mandamused" to repeal its action setting up a [illegible] or submit the question to a vote. [illegible], 1944, the Court handed down its decision holding that the Council should do what the referendum petition requested. It is expected that the matter will be carried to the Supreme Court in Nebraska.

CONTRACTS

Power Contract: Under date of Dec. 26, 1944 a new power contract was entered into with the Loup River Public Power District and the old contract was suspended. Under the terms of the new contract, it is provided that Loup supply all of the demands of the Nebraska Power Company's customers in Nebraska up to 125,000 k.w. Firm power obligation of the company to Loup is 75,000 k.w., the company agreeing to maintain in readiness to serve condition and reserve for the call of the Loup, at all times, at least 75,000 k.w. of the capability of the total installed generating capacity of its Jones Street Plant.

OPERATING STATISTICS

OPERATING STATISTICS, YEARS ENDED OR ON DEC. 31
(Data compiled from reports to Federal Power Commission)

ELECTRIC	1944	1943	1942	1941	1940	1939	1938
Customers:							
³Residential	[illegible]	[illegible]	83,985	81,247	78,942	77,065	75,286
Commercial	[illegible]	9,945	10,971	11,315	11,455	11,482	12,477
Industrial						120	
Other	134	136	176	167	158	673	145
Total customers	93,548	92,983	95,132	82,729	90,555	89,340	87,908
Sales (k.w.h.):							
³Residential	[illegible]	100,404	135,742	107,286,300	100,057,000	78,918,000	71,810,000
Commercial	[illegible]	[illegible]	270,612	247,389,900	218,784,400	61,131,000	205,450,000
Industrial						149,739,000	
Other	98,673	99,135	72,811	73,826,500	94,147,300	87,240,000	74,328,000
Total sales (k.w.h.)	599,547	559,834	479,165	428,502,700	412,988,700	375,829,000	351,588,000
Revenues:							
³Residential	[illegible]	$3,563,3[illegible]	$3,776,039	$3,450,525	$3,254,383	$3,064,993	$2,983,242
Commercial	[illegible]	5,379,[illegible]	4,624,624	4,435,235	4,060,621	2,315,254	4,078,743
Industrial						1,361,249	
Other	972,293	964,377	812,220	794,975	1,326,564	1,241,870	1,009,505
Total revenues	$10,542,354	$9,907,274	$9,212,883	$8,680,735	$8,641,568	$7,983,186	$8,071,490
Steam k.w.h. generated	[illegible]	432,050,[illegible]	337,983,200	396,321,200	437,439,100	413,394,600	389,721,000
Other k.w.h. generated			6,200	9,500	7,200	12,200	8,000
Purchased	122,162,300	177,232,400	136,232,500	76,906,800	17,417,275	396,300	--------
Total k.w.h. generated & purch.	[illegible]	609,322,200	494,222,000	473,333,800	454,863,575	413,803,100	389,729,000
Interchange (in)	[illegible]	27,723,700	32,556,000	None	None	None	None
Interchange (out)	[illegible]	18,032,300	813,900	--------	--------	--------	--------
System peak load k.w.	[illegible]	100,560	94,100	97,850	98,010	78,800	--------

³Includes rural.

INCOME ACCOUNTS

COMPARATIVE INCOME ACCOUNT, YEARS ENDED DEC. 31
(Accounts taken from reports to Federal Power Commission)

	1944	1943	1942	1941	1940	1939	1938
Total operating revenue	$11,203,728	$10,[illegible]9,969	$9,724,417	$9,118,975	$8,641,568	$8,393,333	$8,071,490
Operating expenses	5,004,149	5,038,430	3,899,680	3,661,703	3,518,301	3,355,232	2,968,057
Maintenance	424,250		414,482	345,590	300,000	240,000	277,228
¹Depreciation	730,000	730,000	730,000	680,000	630,000	630,000	580,000
Federal income taxes	588,103	615,770	598,889	571,685	409,812	295,371	320,484
State income taxes	2,443	2,541	2,297	2,987	2,967	3,279	3,860
Other taxes	1,189,206	1,191,346	1,098,489	1,070,952	1,033,097	1,000,855	973,064
Federal excess profits tax	4,496,375	127,100	392,936	150,954	--------	--------	--------
Amort. of lim-term util. inv.	9,237	10,022	9,435	9,525	13,600	23,340	23,827
Total oper. rev. deductions	[illegible]	7,715,270	7,147,170	6,493,324	5,907,746	5,547,877	5,146,500
Net operating revenue	[illegible]	2,704,098	2,577,247	2,625,651	2,733,822	2,845,457	2,924,990
Other income	7,[illegible]	1,564	1,326	3,007	1,312	1,828	11,962
Gross income	[illegible]	2,705,[illegible]	2,578,573	2,628,658	2,735,135	2,847,285	2,936,952
Interest on long term debt	[illegible]	952,500	952,500	952,500	952,500	952,500	952,541
Amortiz.—debt disc. & exp., net	[illegible]	79,691	79,691	79,691	79,691	79,691	79,691
Other interest charges	12,410	9,415	13,196	12,021	9,633	8,898	9,383
Taxes assumed on interest	3,159	2,823	2,396	2,591	2,559	2,605	--------
Int. charged to construction	cr 2,475	cr 1,313	cr 33,459	cr 11,063	cr 3,320	dr 1,445	cr 22,300
Other deductions	32,218	36,802	24,449	19,676	20,616	19,457	20,409
Total income deductions	1,191,501	1,079,721	1,038,964	1,055,415	1,061,379	1,064,574	1,039,884
Net income	1,631,613	$1,626,862	$1,539,609	$1,573,243	$1,673,756	$1,782,711	$1,897,288
Earned surplus, begin. of year	4,766,887	4,539,125	4,398,616	4,424,473	4,399,817	4,416,206	4,368,038
Total credits	6,401,500	6,165,987	5,938,225	5,997,716	6,073,573	6,198,917	6,265,326
Preferred dividends	499,100	499,100	499,100	499,100	499,100	499,100	499,100
Common dividends	200,000	900,000	900,000	1,100,000	1,150,000	1,300,000	1,350,000
Miscellaneous debits to surplus	⁵5,050,193	--------	--------	--------	--------	--------	--------
Earned surplus, Dec. 31	$222,208	$4,766,887	$4,539,125	$4,398,616	$4,424,473	$4,399,817	$4,416,206

¹Depreciation claimed and allowed for income tax purposes: 1944 and 1943, not stated; 1942, $1,058,692; 1941, $1,046,447; 1940, $1,033,132.
²Includes $112,000 transfer from reserve for uncollectibles.
³Includes $68,300 applicable to refunded issues.
⁴After deducting post-war refund of $51,842.
⁵Represents write-off of electric plant adjustments, in accordance with FPC order.

BALANCE SHEETS

COMPARATIVE BALANCE SHEET, AS OF DEC. 31
(Accounts taken from reports to Federal Power Commission)

ASSETS	1944	1943	1942	1941	1940	1939	1938
Total utility plant	⁵$33,309,234	$40,650,582	$40,586,201	$39,660,847	$38,408,934	$38,389,709	$37,906,075
Other investments	3,500	3,500	3,500	3,500	12,430	12,430	18,708
Total inv. & fund accounts	3,500	3,500	3,500	3,500	12,430	12,430	18,708
Cash	871,663	487,812	231,851	280,040	356,110	344,538	420,640
Special deposits	5,391	4,011	3,516	2,763	3,090	3,447	2,328
Working funds	5,500	5,500	5,500	5,500	5,500	5,500	5,500
Temporary cash investments	1,150,000	335,000	--------	--------	92,782	93,974	--------
Notes receivable	--------	--------	--------	200	--------	--------	250
Accounts receivable	624,385	739,313	787,401	899,395	851,840	793,150	740,632

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BALANCE SHEETS (cont'd)

ASSETS	1944	1943	1942	1941	1940	1939	1938
Receivables from assoc. cos.	....	21,021	1,482	....	....	....	....
Materials and supplies	773,350	610,66[illegible]	812,293	789,763	566,432	519,816	504,360
Prepayments	243,451	134,521	147,383	122,207	123,960	126,333	111,852
Other current & accr. assets	31,361	31,282	3,988	67,321	16,340	1,650	2,388
Total current & accr. assets	4,234,259	2,450,136	1,393,370	2,167,192	2,023,265	1,694,417	1,787,780
Unamortized debt disc. & exp.	1,376,971	1,456,663	1,536,354	1,616,046	1,695,737	1,775,428	1,855,120
Post-war tax refund	51,542	....	....	....	....	....	....
Misc. deferred debits	4,009	6,372	3,603	2,251	....	....	22,713
Total deferred debits	1,432,522	1,462,035	1,539,957	1,618,296	1,695,737	1,775,428	1,877,833
Contra assets	9,302	9,069	7,222	8,947	8,847	10,080	....
Capital stock discount & expense	630,342	....	....	....	....	....	....
Unacquired securities	....	47,700	47,700	47,700	47,700	47,700	47,700
Total assets	$41,690,451	$44,654,021	$44,177,950	$43,596,482	$42,254,912	$42,129,765	$41,638,096
LIABILITIES							
Common stock	$5,000,000	$5,000,000	$5,000,000	$5,000,000	$5,000,000	$5,000,000	$5,000,000
a Preferred stock ($100)	7,432,300	7,500,000	7,500,000	7,500,000	7,500,000	7,500,000	7,500,000
Total capital stock	12,432,300	12,500,000	12,500,000	12,500,000	12,500,000	12,500,000	12,500,000
Bond debt	20,000,000	20,000,000	20,000,000	20,000,000	20,000,000	20,000,000	20,000,000
Notes payable	....	....	100,000	500,000	....	....	....
Accounts payable	199,433	130,784	141,853	142,213	96,735	102,480	109,521
Payables to assoc. cos.	....	7,150	29,877	23,900	22,300	7,189	7,240
Customers deposits	161,290	151,1[illegible]	140,763	140,326	161,009	164,395	168,173
Taxes accrued	1,399,263	1,181,762	1,336,564	1,048,313	730,571	579,402	578,343
Interest accrued	186,601	176,025	171,638	172,151	179,194	176,370	173,258
Other current liabilities	82,820	74,611	72,294	72,400	121,546	115,876	107,719
Total current & accr. liabilities	2,227,421	1,722,085	2,013,155	2,099,370	1,311,376	1,145,492	1,136,254
Customers advances for construction	27,251	35,333	49,814	40,571	3,364	2,433	2,398
Other deferred credits	40,831	....	....	....	....	....	9,724
Total deferred credits	68,082	35,333	49,814	40,571	3,364	2,433	12,122
Reserve for property retirements	6,335,964	5,336,809	4,786,842	4,181,955	3,729,356	3,853,565	3,343,556
Res. amort. of lim.-term elec. inv.	122,363	113,817	108,115	95,068	....	....	....
Res. for uncollectible accounts	66,991	58,425	49,972	49,022	51,582	52,317	53,289
Injuries and damages reserve	33,932	50,657	58,591	72,744	83,353	90,730	....
Other reserves	29,844	25,488	38,505	32,858	121,424	55,830	159,075
Total reserves	6,569,495	5,587,162	5,037,028	4,432,756	3,985,715	4,052,343	3,555,920
Contrib. in aid constr.	26,640	23,365	21,480	16,160	13,015	9,278	7,471
Contra liabilities	9,302	9,069	7,222	8,947	8,847	10,080	....
Capital surplus	....	10,122	10,122	10,122	10,122	10,122	10,123
Earned surplus	322,208	4,766,887	4,539,125	4,398,616	4,424,473	4,399,817	4,416,206
Total surplus	322,208	4,777,009	4,549,248	4,408,739	4,434,595	4,409,939	4,426,329
Total liabilities	$41,690,451	$44,654,021	$44,177,950	$43,506,482	$42,254,912	$42,129,765	$41,638,096
Net current assets	$2,011,826	$728,051	d $19,788	$67,822	$711,889	$748,925	$651,526

a Represented by: (a) 1944, 51,962 shares 7% and 22,561 shares 6% preferred; prior years, 52,000 shares 7% and 23,000 shares 6% preferred; (b) 1938-44, 1,000,000 no par common shares.

[illegible] 7% preferred and 439 6% preferred shares.

Includes amounts applicable to refunded issues, $[illegible] over life of refunding issue and $[illegible] over a period to 1945.

Comprises: Tangible electric plant, at original cost, $[illegible]; intangibles, $2,931,041; total, $[illegible]. See also General Note below.

General Note

In Nov., 1944, company, pursuant to an FPC order, reclassified its utility plant account to segregate the original cost of tangible utility plant and plant acquisition adjustments and disposed of plant adjustments of $5,956,072, principally by a charge to earned surplus. The Commission ordered the amortization from earned surplus of the plant acquisition adjustments of $2,911,498 (which is classified as intangibles) over a period of ten years beginning with 1945. Company has petitioned the Commission for an extension of time in which to present an alternate plan for the disposition of such plant acquisition adjustments of $2,911,498 in whole or in part out of capital surplus, to be created by a reduction in the stated value of common stock, in lieu of earned surplus.

The Commission also has ordered the company to determine the amount of profit on fees paid to former associated companies which is still included in utility plant. The amount of such profit has not been finally determined although preliminary estimates indicate it is approximately $380,000.

FINANCIAL & OPERATING RATIOS

ELECTRIC	1944	1943	1942	1941	1940	1939	1938
Residential sales % of total	18.08	17.9	23.3	25.0	24.2	28.5	20.4
Industrial sales % of total	....	....	....	....	....	33.8	....
Residential revenues % of total	35.7	36.0	41.8	39.7	37.7	38.6	37.0
Industrial revenues % of total	....	....	....	....	....	19.6	....
Res. average rate per k.w.h.—cents	3.49	3.54	2.78	3.22	3.25	2.98	4.15
Com. average rate per k.w.h.—cents	....	....	....	....	....	3.79	....
Ind. average rate per k.w.h.—cents	....	....	....	....	....	1.04	....
Res. average cust. use (k.w.h.)	1,297	1,212	1,618	1,320	1,267	998	954
INCOME ACCOUNT							
% Deprec. of gross operating revenue	6.5	7.0	7.5	7.5	7.3	7.8	7.2
% Maint. of gross operating revenue	3.8	....	4.3	3.8	3.5	2.9	3.4
% Annual deprec. to total plant	2.06	1.79	1.80	1.71	1.64	1.64	1.53
% Net oper. revenue to net plant	9.5	7.3	7.2	7.4	7.9	8.3	6.5
Operating ratio—%	66.2	66.9	63.3	63.2	63.6	62.5	59.8
Times chgs. earn. before inc. taxes	3.44	3.20	3.44	3.18	2.97	2.96	3.14
Times chgs. earn. after inc. taxes	2.46	2.51	2.48	2.49	2.58	2.88	2.62
Times chgs. & pfd. dividend earned	1.71	1.71	1.68	1.69	1.75	1.82	1.81
Times preferred dividends earned	3.28	3.26	3.08	3.15	3.35	3.57	3.50
Earned per share, preferred	$21.93	$21.83	$20.66	$21.11	$22.46	$23.92	$23.48
Earned per share, common	$1.11	$1.13	$1.04	$1.07	$1.17	$1.23	$1.40
Number of shares—7% preferred	51,962	51,962	51,962	51,962	51,962	51,962	51,962
—6% preferred	22,561	22,561	22,561	22,561	22,561	22,561	22,561
—common	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000
BALANCE SHEET							
% total capitalization represented by:							
Mortgage debt	50.3	44.3	44.8	44.7	44.7	44.8	44.8
Other debt	10.7	9.4	8.4	4.5	9.5	9.5	9.5
Preferred stock	22.7	20.0	20.2	20.3	20.2	20.2	20.3
Common stock & surplus	16.3	26.3	25.8	25.5	25.6	25.5	25.4
% mortgage debt to depreciated plant	57.1	46.7	46.1	46.5	47.5	47.8	47.8
% all debt to depreciated plant	69.2	56.7	55.9	58.4	57.6	57.9	57.8
Ratio gross plant to gross revenues	3.2–1	3.9–1	4.2–1	4.3–1	4.5–1	4.6–1	4.7–1
% deprec. reserve to gross plant	17.9	11.7	11.8	10.5	9.7	10.0	8.8
PRICE RANGES:							
First 4½s, 1981	111–106½	110⅝–107	111–106⅝	112–107	111⅞–106⅝	111½–107½	110⅝–107⅝
Debenture 6s, 2022	120–114⅛	117¾–114	124¼–113	124–114⅞	125⅛–120	125–114½	120½–111
7% Cumulative preferred	114–105⅞	114–104¾	118–102½	118⅛–109⅛	117⅛–118⅛	117–102	116–102⅛
6% Cumulative preferred	106½–104	106–100	105–95⅛	115–108	114–110	110–101	106⅝–[illegible]

FUNDED DEBT

1. Nebraska Power Co. first mortgage gold 4½s, series due 1981:

Rating—Aa

OPEN MORTGAGE—Issued and outstanding, Dec. 31, 1944, series due 1981, $16,500,000.

DATED—June 1, 1921.

MATURITY—June 1, 1981.

INTEREST PAID—J&D 1, at office of trustee and at Harris Trust & Savings Bank, Chicago.

TRUSTEE—Guaranty Trust Co., New York.

DENOMINATION—Coupon, $1,000; registered $1,000 or authorized multiples.

CALLABLE—As a whole or in part on 30 days' notice at any time to each June 1, incl., as follows:

1941	106½	1946	105	1950	104½
1954	104	1958	103½	1962	103
1966	102½	1970	102	1974	101½
1978	101	1981	100		

SINKING FUND—No provision.

SECURITY—A first mortgage on all fixed property and franchises now owned by company. Property includes the Omaha steam-electric generating station with an installed capacity of 78,000 k.w., more than 300 miles of high voltage transmission lines and more than 1,200 miles of electric distribution system.

ADDITIONAL BONDS—May be issued in this or other series (a) against properties as existing on May 31, 1931 to a total not exceeding $4,500,000; (b) for refunding bonds issued hereunder; (c) for cash, and (d) for not more than 75% of cost or value of property additions made subsequent to May 31, 1931, provided, except for bonds issued for refunding purposes, net earnings for twelve out of fifteen months next preceding have been equal to

either (1) twice annual interest requir[illegible] on, or (2) 12% of all bonds outstand[illegible] to be issued. No bonds may be issued on basis of property additions subject to prior liens unless provision is made for redemption, payment and/or satisfaction of such prior liens. Bonds issued hereunder upon basis of specially classified properties shall not at any time exceed [illegible] of bonds issued hereunder.
MODIFICATION OF INDENTURE—Modification of the mortgage is permitted with assent of company and of holders of at least [illegible] of bonds outstanding.
PURPOSE—[illegible] for redemption of $[illegible] first mortgage bonds due 1949 for additions to property and for other purposes.
TAX STATUS—Company does not assume or refund any state or federal taxes.
LEGAL—[illegible] New Hampshire, New [illegible] and Washington.
LISTED—Unlisted trading on New York Curb Exchange.
OFFERED—$18,500,000 at [illegible] in May, 1931 by Harris, Forbes & Co. and [illegible] & Co. Inc., New York, and Coffin & Burr, Inc., Boston.
PRICE RANGE— 1944 1943 1942
4½s 1961 [illegible]

2. Nebraska Power Co. debenture gold 6s, series A, due 2022:

Rating—A

OPEN INDENTURE—Issued and outstanding, Dec. 31, 1944, series A, $3,500,000.
DATED—September 1, 1922.
MATURITY—September 1, 2022.
INTEREST PAID—M&S 1 at office of trustee.
TRUSTEE—Chemical Bank & Trust Co., New York.
DENOMINATION—$100, $500, $1,000 and $5,000; registerable as to principal.
CALLABLE—On and after Sept. 1, 1947, and up to Feb. 28, 2017, inclusive, at any time upon 30 days' notice, at 110; thereafter at par.

Upon liquidation or dissolution of the company, the series A bonds become due and payable at 110% if such event occurs prior to March 1, 2017, and at their principal amount, if such event occurs thereafter; except, however, bonds will not become payable in the event of dissolution following assumption of the bonds by a successor corporation.
SECURITY—A direct obligation of the company but not secured by mortgage.

ADDITIONAL BONDS—May be issued in series bearing such rates of interest, maturing on such dates and redeemable on such terms, as the company may determine prior to the issue thereof. No additional debenture bonds may be issued unless the net income applicable to interest charges for twelve consecutive calendar months within the preceding fifteen calendar months shall have been not less than twice all annual interest charges (including interest on the debenture bonds then to be issued but excluding indebtedness to be concurrently paid off with proceeds of sale of capital stock and/or debentures to be issued.
TAX STATUS—Pennsylvania tax not exceeding 4 mills refunded. Company pays normal income tax up to 2%.
LISTED—Unlisted trading on New York Curb Exchange.
OFFERED—$3,500,000 at 90½ in Sept., 1922, by Bonbright & Co., Inc., W. C. Langley & Co. and Tucker, Anthony & Co., New York.
PRICE RANGE— 1944 1943 1942
6s, A, 2022 ... 120-111⅞ 117¾-114 124½-113

CAPITAL STOCK

1. Nebraska Power Co. 7% cumulative preferred; par $100:
AUTHORIZED—150,000 shares (increased from 100,000 shares Feb. 8, 1926); issued, 56,962; outstanding, 51,962 shares; in treasury, 5,000 shares; par $100.
DIVIDEND RIGHTS—Has equal preference with 6% preferred (No. 2) as to cumulative dividends at rate of 7% per annum.
DIVIDEND RECORD—Initial dividend paid Sept. 1, 1917; regular dividends paid quarterly, March 1, etc., to stock of record about Feb. 17, etc.
VOTING RIGHTS—One vote per share.
LIQUIDATION RIGHTS—Has equal preference with 6% preferred (see No. 2 below) as to assets and in liquidation entitled to $100 per share and accrued dividends.
CALLABLE—On any dividend date on 30 days' notice at 110.
LISTED—Unlisted trading on New York Curb Exchange.
TRANSFER AGENT—United States National Bank, Omaha, Neb.
REGISTRAR—First National Bank, Omaha, Neb.
PRICE RANGE— 1944 1943 1942
7% preferred ... 114-105¾ 114-104¾ 115-103¼

2. Nebraska Power Co. 6% cumulative preferred; par $100:
AUTHORIZED—100,000 shares; issued and outstanding, [illegible] shares; par $100.
DIVIDEND RIGHTS—Has equal preference with 7% preferred (No. 1) as to cumulative dividends at the rate of 6% per annum.
DIVIDEND RECORD—Initial dividend of 1½% paid March 1, [illegible]. Regular dividends paid quarterly, Mar. 1, etc., to stock of record Feb. 17, etc.
VOTING RIGHTS—One vote per share.
LIQUIDATION RIGHTS—Has equal preference with 7% preferred (see No. 1) as to assets and in liquidation entitled to $100 per share and accrued dividends.
CALLABLE—On any dividend date on 30 days' notice at 110.
TRANSFER AGENT—United States National Bank, Omaha, Neb.
REGISTRAR—First National Bank, Omaha, Neb.
OFFERED—To customers ($1,000,000) in Nov., 1929, and ($1,000,000) in Jan., 1931.
PRICE RANGE— 1944 1943 1942
6% preferred ... 106½-104 106-100 105-95½

Proposed Preferred Refunding: Company has asked the State Railway Commission, the FPC and the SEC, for permission to sell $7,000,000 2½% notes to retire preferred stock as of Sept. 1, 1945, at a call price of $110 a share. Company proposes to put up $7,000,000 in first mortgage bonds as collateral security for the notes, proceeds from sale of which would be used to retire 6% and 7% preferred stocks now outstanding.

3. Nebraska Power Co. common; no par:
AUTHORIZED—2,000,000 shares; outstanding, 1,000,000; no par (changed from $100 par to no par, Feb. 8, 1926, 20 no par shares issued for each $100 share).
VOTING RIGHTS—One vote per share.
OWNERSHIP—All owned by Omaha Electric Committee, Inc. (see "Control" above).
DIVIDEND RESTRICTION—Omaha Electric Committee, Inc. has agreed that it will not permit to be paid any dividends or distribution on company's common stock, except to obtain funds for payment of operating expenses (not in excess of $50,000 per annum), trustees' fees and taxes.

CALIFORNIA WATER SERVICE COMPANY

CAPITAL STRUCTURE

FUNDED DEBT

Issue	Rating	Amount Outstanding	Times Charges Earned 1944	Times Charges Earned 1943	Interest Dates	Call Price	Price Range 1944	Price Range 1932-44
1. 1st 4s, B, 1961	A	$11,882,000	2.76	2.63	M&N 1	See text	109½-106½	(a)110-99

CAPITAL STOCK

Issue	Par Value	Amount Outstanding	Earned per Sh. 1944	Earned per Sh. 1943	Divs per Sh. 1944	Divs per Sh. 1943	Call Price	Price Range 1944	Price Range 1932-44
1. 6% cumulative preferred, A & B.	$25	139,000 shs.	$3.63	$4.09	$1.50	$1.50	$26.25	28¾-27½	(b)29½-24½
2. Common	25	116,568 shs.	2.54	3.08	2.00	2.00	----	---------	---------

(a)Range since 1940 for series A. (b)Range since 1936.

HISTORY

Incorporated in California, Dec. 21, 1926, and subsequently acquired and merged Fresno City Water Corp., Bakersfield Water Works, Electric Water Co., Hermosa, Redondo Water Co., Port Costa Water Co., Hanford Water Co., Bay Point Utilities Co., Marysville Water Co., Visalia City Water Co., Chico Water Supply Co., Chico-Vecino Water Co., W. E. White Water Works, Belvedere Water Corp., Petaluma Power & Water Co., Tuxedo Water Co. of Stockton, and water departments of Pacific Gas & Electric Co. located at Stockton, Redding, Willows, Livermore, Dixon and Oroville. In July, 1931, acquired Pacific Water Co., San Carlos Water Co. and Los Altos Water Co. In June, 1936 acquired Bear Gulch Water Co. Acquired in 1941 property of several small mutual and other water companies operating in territory contiguous to existing service areas, including Sierra Water Service Co., San Carlos.

In Aug., 1941, company sold its Redding properties to the City of Redding, which, in May, 1939, had installed a duplicate distribution system in direct competition with the company. Sale was effected at a loss to company of $204,240.

On Mar. 29, 1945, General Water Gas & Electric Co., former parent, sold entire common stock investment (116,568 shares) in company for $3,870,028 cash.

MANAGEMENT

Officers
Ralph Elsman, Pres. & Gen. Mgr.
F. L. Dodge, Vice-Pres., Asst. Gen. Mgr.
C. F. Mau, Vice-President
J. H. Jamison, Vice-President
H. F. Hullck, Vice-Pres. & Treas.
H. F. Keller, Secretary
R. E. Shupe, Asst. Sec. & Asst. Treas.

Directors
Earl C. Elliott, San Francisco, Calif.
Ralph Elsman, San Jose
A. Crawford Greene, San Francisco
R. C. Leib, San Jose, Calif.
C. M. O'Brien, San Jose, Calif.
F. J. Oehler, San Jose, Calif.
E. N. Richmond, San Jose, Calif.
A. R. Thompson, San Jose, Calif.
E. B. Walthall, San Mateo, Calif.

Auditors: Peat, Marwick, Mitchell & Co.
Annual Meeting: First Wednesday in April.
No. of Stockholders: Apr. 15, 1945: Preferred, 1,963; common, 3.
No. of Employees: Dec. 31, 1944, 282.
Office: 374 West Santa Clara St., San Jose 8, Calif.

BUSINESS

Engaged in production, gathering, storage, purification, distribution and sale of water for domestic, industrial, public and irrigation uses, and for fire protection in or to 30 cities and communities and adjacent territory, all in State of California. Estimated population of area served, 448,365.

Number of consumers, as of Dec. 31, 1944, 100,733. The water supplies are derived principally from systems of driven wells.

PROPERTIES

Total production capacity is 175,500,000 gals. daily, which compares with an average daily consumption of about 62,963,000 gals. The total storage capacity (exclusive of Contra Costa development where an artificial reservoir, holding 970,000,000 gallons of water, has been constructed) is about 368,858,850 gals., which is maintained for reserve and pressure equalizing purposes.

REGULATION

Company is subject to regulation by the Railroad Commission of the State of California in matters relating, among other things, to rates, duties, service, acquisition and sale of properties and issuance of securities.

STATISTICS

COMPARATIVE OPERATING STATISTICS, YEARS ENDED DEC. 31

	1944	1943	1942	1941	1940	1939	1938
Miles of mains	1,522	1,508	1,494	1,471	1,427.6	1,369	1,333
Hydrants	5,169	5,003	4,878	4,819	4,674	4,528	4,557
Services	111,067	108,436	105,391	104,020	99,837	94,359	88,511
Meters (active)	78,948	77,396	76,266	72,941	88,606	64,641	83,051
Aver. daily consumption (gals.)	62,963,000	53,548,000	53,212,000	54,140,000	54,406,000	53,537,000	51,461,000

INCOME ACCOUNTS

COMPARATIVE EARNINGS, YEARS ENDED DEC. 31

	1944	1943	1942	1941	1940	1939	1938
Operating revenues	$3,648,463	$3,393,641	$3,057,839	$2,871,037	$2,770,049	$2,699,941	$2,537,713
Operating expenses	1,522,920	1,355,536	1,209,094	1,153,899	1,098,576	1,107,848	1,060,083
Gen. & engineering exp. chgd. to construction (cr)	35,410	34,722	41,535	47,723	47,347	49,293	51,367
Maintenance	144,871	133,704	104,477	107,469	96,629	99,007	102,612
General taxes	264,614	262,389	245,171	249,595	238,745	231,081	216,267
Depreciation	(c)354,388	(c)338,896	323,598	312,374	300,183	290,099	280,491
Net earnings	$1,397,070	$1,337,848	$1,217,034	$1,095,423	$1,084,464	$1,021,199	$929,627
Operating ratio	61.71%	60.58%	60.20%	61.85%	60.55%	62.18%	63.37%
Other income	12,860	12,089	11,432	7,798	8,415	8,383	8,135
Total income	$1,409,943	$1,349,937	$1,228,466	$1,103,221	$1,092,880	$1,029,581	$937,762

4

981

No. 15425

In the

United States Court of Appeals

For the Eighth Circuit

AHA PUBLIC POWER DISTRICT, a public corporation and olitical subdivision of the State of Nebraska, WESTERN OWA POWER COMPANY, a corporation, IOWA POWER AND IGHT COMPANY, a corporation, and OMAHA ELECTRIC OMMITTEE, INC., a corporation, *Appellants,*

vs.

ES W. O'MALLEY, Collector of Internal Revenue for e United States Internal Revenue District of Nebraska, *ppellee*

BRIEF FOR APPELLANTS

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THOMAS C. QUINLAN
REECE A. GARDNER
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Attorneys for Appellants

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SMITH-GREYER, LAW PRINTERS, KANSAS CITY, MO.

FILED

OCT 24 1955

E. E. KOCH

In order to avoid a possible loss of the advantage pre-
nted by the order of the Securities and Exchange Com-
ission directing American Power to dissolve, which
ould be lost if the properties of Nebraska Power should
e sold before the validity of the Peoples Power Com-
ission Law should be determined, a group consisting
f five who had been members of the Peoples Power Com-
ission of Omaha and three who had not, formed a com-
ittee known as the Power Committee. That Committee
en employed Guy C. Myers, who had assisted Consumers
acquiring all of the other privately owned electric
ilities in Nebraska, to work out a plan by which the
ock or properties of Nebraska Power could be purchased
d financed.

The plan which resulted was to finance purchase of the
mmon stock of Nebraska Power with obligations of
oup, with legal title to the stock to vest temporarily in a
nprofit corporation for a maximum period of approxi-
ately three years during which time either a suitable
blic agency could be established in the Omaha area
rough the validation of the powers of the Omaha
oples Power Commission or by the enactment of Legis-
tion for the creation of a public power district ac-
ptable to the people of Omaha, or legislation could be
tained to authorize direct ownership of the properties
Nebraska Power by Loup, Loup to agree that at the
d of the three-year period it would buy the properties
Nebraska Power lying within the State of Nebraska
r a price sufficient merely to discharge any obligations
hich were a lien on the properties, and the nonprofit
rporation to agree that it would transfer such properties
d either the Iowa properties or the proceeds thereof
either the public agency in Omaha or to Loup. Follow-
this plan the Electric Committee was organized and
means of the issuance of bonds by Loup, through its

Eastern Division, purchase of the common stock of Nebraska Power was financed and carried out.

The sole purpose of the Electric Committee was to act as the temporary medium by which the electric system of Nebraska Power could be acquired and transferred to a political subdivision of Nebraska. To that end, it executed an agreement with Loup, declaring its public trust enforceable by Loup, the Omaha Peoples Power Commission, the City of Omaha, the State of Nebraska, and any Omaha citizen, and bound itself to convey the properties either to a public agency in the Omaha area or to Loup. As promptly as possible after the acquisition of the stock, its articles of incorporation were amended to eliminate any possibility that the properties be held otherwise than in public ownership and to insure the ultimate vesting of the ownership and operation of the properties in the city of Omaha or another Nebraska public body.

In August, 1945, the Omaha District was formed. Its legality was forthwith contested in litigation, but by the fall of 1946 this litigation was finally concluded in its favor and it was in position to operate as a public utility and political subdivision of the State of Nebraska.

It is at this point that the case at bar begins, but the foregoing historical background is submitted to explain the origin of the Electric Committee and the function it performed in the events which then ensued.

The first action of the District was to make arrangements for the operation of the Iowa properties of Nebraska Power. In *State* v. *Consumers Public Power District*, 143 Nebr. 753, 10 N. W. 2d 784, 795, the Supreme Court of Nebraska had in dictum indicated that the Nebraska public power districts had only limited authority to own properties in other states. Accordingly, at the direction of the Omaha District (and under the articles of incorporation of the Electric Committee it could act

only at the direction of t
Committee caused the in
hold for the benefit of th
other than those in an a
and the Electric Committ
District, confirmed the p
Committee held all of its
which it had obtained fro
assets of Nebraska Powe
to the Omaha District.

An effort was then mad
Bluffs, Iowa, which was
in acquiring the Iowa facil
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during the period from Dec
was exempt from taxation
116(d) of the Internal Reve

only at the direction of the Omaha District), the Electric Committee caused the incorporation of Western Iowa to hold for the benefit of the Omaha District the Iowa assets other than those in an area west of the Missouri River, and the Electric Committee, by agreement with the Omaha District, confirmed the public trust in which the Electric Committee held all of its assets, including the securities which it had obtained from Western Iowa. The Nebraska assets of Nebraska Power were then transferred directly to the Omaha District.

An effort was then made to interest the City of Council Bluffs, Iowa, which was the only public body concerned, in acquiring the Iowa facilities. Failing that, the securities of Western Iowa were sold to a privately owned utility. At the conclusion of that sale, the proceeds thereof, including the amounts derived from the operation of the Iowa properties during the period in which they were beneficially owned by the Omaha District, together with all other assets then in the hands of the Electric Committee, were finally transferred to the Omaha District.

It will be observed from the foregoing facts that from the time of the incorporation of Western Iowa to the date of the sale of its securities, all of its stock and securities were owned and held for the use and benefit of the Omaha District, a political subdivision of the State of Nebraska. All of its income was derived from a public utility, and inured solely to the benefit of the Omaha District. It would therefore seem to be clear that all of its income during the period from December 2, 1946 to May 14, 1949 was exempt from taxation by the provisions of section 115(d) of the Internal Revenue Code.

The legislative history of section 116(d) of the Internal Revenue Code of 1939, its contemporaneous and continuing interpretation by the Treasury Department and early decisions construing it clearly show that Congress intended to exempt from income taxes income derived from a public utility which inures to the benefit of a political subdivision of a state.

As heretofore stated, so far as material here, section 116 reads as follows:

SEC. 116. EXCLUSIONS FROM GROSS INCOME.

In addition to the items specified in section 22(b), the following items shall not be included in gross income and shall be exempt from taxation under this Chaper:

* * * * * * *

(d) *Income of States, Municipalities, etc.*—Income derived *from any public utility* * * * and *accruing to* any * * * *political subdivision* of a State * * *. (Italics added)

As we have pointed out above, after the stock and securities of Western Iowa were acquired by the Electric Committee, the stock and securities and all of the assets back of them were held by the Electric Committee for ultimate distribution to the Omaha District which was a "political subdivision of a State."

Thus, it is clear that the income of Western Iowa was all derived from a public utility, and it is also perfectly clear that all of that income inured to the benefit of a political subdivision of the state of Nebraska. Thus, the sole question remaining is whether that income "accrued to" the Omaha District within the meaning of those words as used in the statute.

Webster's New
Edition, defines the

1. *Law.* To co
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2. *To come by*
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Section 11(b) of the
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Provided, furth
under this section

tended to exempt only the income which was either paid rectly to a political subdivision or was payable to it an unenforceable claim it would have provided for *deduction* of that amount by the corporation and then uld never be an occasion for the imposition of a tax on such income. It is perfectly clear, therefore, that at the Congress was concerned with was the income m a public utility which was not paid or payable to political subdivision but which inured to its benefit th the result that a tax upon the income would impose burden or loss upon it. Thus we submit that when a litical subdivision of a state operates a public utility ough the medium of its wholly owned subsidiary or strumentality, the statute was intended to and does mpt such income from the tax, even though the income retained in the business of the instrumentality.

All of the income of Western Iowa Power Company inured the benefit of Omaha Public Power District, a political division of the State of Nebraska.

The facts herein clearly show that all of the income of estern Iowa inured solely to the benefit of the Omaha strict. As has been seen, by the terms of its charter and an express declaration of trust, the Electric Comittee held all of the stock and securities of Western wa in trust for the exclusive benefit of the District and rsuant to that trust ultimately distributed to the Disct all of the proceeds of the sale of those securities, luding the amount of the accumulated earnings of estern Iowa.

Conclusion

We therefore submit that all of the income of Western wa was exempt from tax under the provisions of section

5

[illegible]
Internal Revenue Service
(Revised Feb. [illegible])

CLAIM

TO BE FILED WITH THE COLLECTOR WHERE ASSESSMENT WAS MADE OR TAX PAID

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse.

COLLECTOR'S STAMP
(Date received)

- [ ] REFUND OF TAXES ILLEGALLY, ERRONEOUSLY, OR EXCESSIVELY COLLECTED.
- [ ] REFUND OF AMOUNT PAID FOR STAMPS UNUSED, OR USED IN ERROR OR EXCESS.
- [ ] ABATEMENT OF TAX ASSESSED (not applicable to estate, gift, or income taxes).

STATE OF ..... } ss:
COUNTY OF .....

TYPE OR PRINT

Name of taxpayer or purchaser of stamps [redacted]

Business address [redacted]

Residence [redacted]

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed [redacted]
2. Period (if for tax reported on annual basis, prepare separate form for each [illegible]) [redacted]
3. Character of assessment or tax [redacted]
4. Amount of assessment, $ [redacted]; dates of payment [redacted]
5. Date stamps were purchased from the Government [redacted]
6. Amount to be refunded [redacted]
7. Amount to be abated (not applicable to income, gift, or estate taxes) [redacted]
8. The time within which this claim may be legally filed expires, under section [redacted] of [redacted] on [redacted], 19[redacted]

The deponent verily believes that this claim should be allowed for the following reasons:

[redacted]

(Attach letter-size sheets if space is not sufficient)

Subscribed and sworn to before me this ..... day of ....., 19.....

Signed .....

.....
(Signature of officer administering oath)

.....
(Title)

(SEE INSTRUCTIONS ON REVERSE)

"EXHIBIT A"

[illegible]

at specified rates.

(7) On December 2, 1946, Omaha Electric Committee, Inc. and Omaha Public Power District entered into an agreement under the terms of which it was acknowledged that all of the property held and owned by Omaha Electric Committee, Inc. belonged to Omaha Public Power District. On that date, Omaha Public Power District and Western Iowa Power Company caused Nebraska Power Company to distribute all of its generating plants and operating properties to its shareholders in partial liquidation, Western Iowa Power Company receiving substantially all of the assets located in Iowa in complete cancellation and redemption of the stock it then owned in Nebraska Power Company, and Omaha Public Power District receiving all of the Nebraska Power Company's generating plants and all of its operating properties located in Nebraska. Omaha Public Power District assumed all of the obligations, and received all of the rights of Nebraska Power Company under the contract of November 30, 1946, between Nebraska Power Company and Western Iowa Power Company. Between 1932 and December 2, 1946, Nebraska Power Company never raised any of the rates at which it sold electrical energy, and it never at any time added any part of the tax imposed by section 616(a) of the Revenue Act of 1932, as amended by the Act of June 16, 1933 (sec. 3411, Internal Revenue Code) to the price at which it sold electric energy.

(8) Between December 2, 1946, and May 14, 1949, Omaha Electric Committee, Inc. owned and held all of the common stock of Western Iowa Power Company for the use and benefit of Omaha Public Power District, under and pursuant to its articles of incorporation and the agreement of December 2, 1946, and during all of that time Western Iowa Power Company purchased all of its electric current from Omaha Public Power District under and pursuant to said contract of November 30, 1946, and sold such electric current to its customers within its Iowa distribution system at rates, some of which were higher than those which had therefore been charged by Nebraska Power Company. Thereafter and subsequent to the end of each month following December 2, 1946, Western Iowa Power Company filed returns with the Collector of Internal Revenue at Omaha, Nebraska, and paid to him with respect to the electrical energy sold by it, the tax imposed by section 3411 of the Internal Revenue Code, for months, in amounts, and on dates as follows:

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and conditions subsequently incorporated in a formal agreement executed on February 11, 1949, as hereinafter stated.

(11) A formal agreement was entered into between the parties on February 11, 1949, which said formal agreement incorporated the provisions of the memorandum agreement set forth above, and specifically provided that the accountants for Omaha Electric Committee and the accountants for Iowa Power and Light Company should determine the surplus of Western Iowa Power Company at the date of acquisition by Iowa Power and Light Company, and that as soon as the accountants' report had been submitted and agreed to, Iowa Power and Light Company would

> promptly pay to the Committee [Omaha Electric Committee] the amount, if any, by which the earned surplus shown in said report exceeds the amount of earned surplus shown in the September 30, 1948, balance sheet of Western Iowa [Western Iowa Power Company], * * *.

(12) The sale was completed on May 14, 1949. All of the excise taxes which were paid as stated above were charged against and reduced the earned surplus of Western Iowa Power Company, and thus reduced the purchase price paid by Iowa Power and Light Company. The latter company and Western Iowa Power Company have recognized that any refund of such taxes would inure to the benefit of Omaha Public Power District.

(13) On May 14, 1949, following the transfer of its stocks and bonds to Iowa Power and Light Company, Western Iowa Power Company was liquidated by the transfer of its property and assets to Iowa Power and Light Company.

(14) The refund for which claim is hereby made will inure solely to the benefit of Omaha Public Power District. This claim is accordingly made jointly and severally by each of the claimants herein, and therefore, any money received hereunder, including interest, by any one of the parties hereto, other than the Omaha Public Power District, will be immediately paid over to Omaha Public Power District as the real party in interest herein.

(15) Western Iowa Power Company did not include the tax sought to be recovered, or any part thereof, in the sales price of the electrical energy with respect to which said tax was imposed, and it has not collected the amount of the tax, or any part thereof, from any vendee or from any vendees. No other claim for refund of all

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6

Exhibit 7

AGREEMENT

This agreement, made and entered into this 2nd day of December, 1946, by and between the Omaha Electric Committee, Inc., a non-profit corporation organized under the laws of the State of Nebraska (hereinafter referred to as the "Committee"), the party of the first part, and the Omaha Public Power District, a political subdivision of the State of Nebraska (hereinafter referred to as the "Omaha District"), the party of the second part, WITNESSETH:

WHEREAS, the Committee is a non-profit corporation, organized under the laws of the State of Nebraska, for the purpose of exercising a public trust as set forth in Article III of the Articles of Incorporation of Omaha Electric Committee, Inc, as follows:

"A. The promotion of the common good and general welfare of certain municipalities and persons residing in the States of Nebraska and Iowa, including particularly the welfare of the City of Omaha and its inhabitants and the inhabitants of the surrounding territory, by providing cheap and efficient service, power and heat at low rates.

"H. The Board of Trustees of the corporation shall notwithstanding the broad powers herein granted conduct the affairs of the corporation for the purpose of ultimately vesting in the City of Omaha, Nebraska, or in some public agency, public body or political subdivision of the State of Nebraska the ownership and operation of properties used in supplying electric energy to the inhabitants of the City of Omaha, Nebraska, and surrounding territory. And such transfer or any transfer of stock made for the purpose of enabling such public agency, public body or political subdivision to acquire such properties shall be made for a consideration not in excess of an amount found necessary by the Board of Trustees of the corporation in order to effect a retirement of all indebtedness and other obligations of the corporation and of corporations controlled by it, or for no consideration if no such indebtedness exists. If the corporation shall at the time of any such transfer own or control any properties in addition to those used in supplying electric energy to the residents of the City of Omaha and surrounding territory, it shall cause the same to be transferred or disposed of in such manner and for such consideration as may be directed by the City, public agency, public body or political subdivision of the State of Nebraska constituting the transferee under any such transfer. The consideration so received after payment of all expenses shall be paid to such transferee. When and as any public utility properties shall be held or controlled by the corporation after the retirement of all its obligations and those of corporations controlled by it other than current indebtedness

incurred in normal operations, this corporation shall prior to the transfer thereof, as hereinbefore provided, operate such properties substantially without profit and any small profit which may accrue through such operations shall be rebated to consumers from time to time, or paid to the transferee under any transfer made pursuant to the provisions of this subdivision."

WHEREAS, in furtherance of the performance of the trust imposed on the Committee, the Committee on December 26, 1944, entered into a certain agreement with the Loup River Public Power District, a public corporation and political subdivision of the State of Nebraska, whereby the said Loup River Public Power District acknowledged said trust and accepted the benefits thereof, conditioned only upon the transfer of the trust property to a public agency duly organized under the laws of the State of Nebraska for the purpose of acquiring said trust properties, which said agreement reads in part as follows:

"Section 1. The Committee hereby warrants, covenants and agrees with the District for the benefit of the District, and as a part of the consideration for the covenants and agreements herein contained to be done and performed by the District, and for the benefit of the Omaha Peoples Power Commission, the City of Omaha, and the citizens and residents of said City, that the acquisition of the common stock and properties and assets of the Nebraska Power Company is for the sole purpose of transferring the ownership, operation and management of said properties and assets to public corporations and agencies of the State of Nebraska, and that the Committee will receive no profit, benefit or advantage to the members of the Committee in, by or through such acquisition and transfer, and further covenants and agrees that this warranty covenant and agreement shall be enforceable by the District, the Omaha People's Power Commission, the City of Omaha, the State of Nebraska, or any citizen and resident of the City of Omaha, and the Committee hereby waives any claim or defense of invalidity in any suit, action or proceeding which may be brought by any person, firm or corporation, public or private in any court, for the enforcement of this warranty, covenant and agreement.

* * * * * * * * * * *

"Section 4. Anything to the contrary herein notwithstanding, the Committee shall not be obligated nor required hereunder to transfer the distribution facilities now or formerly owned by the Nebraska Power Company located within the metropolitan City of Omaha, and such of said properties lying without the corporate limits of said city as are not an integral part of the said properties within said city, if the

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Committee shall, within the term of this agreement, sell and convey said properties to a peoples power commission organized under L. B. 204, passed at the 1943 Session of the Nebraska Legislature, or to the city of Omaha, or to some other public agency duly organized under the laws of the State of Nebraska for the purpose of acquiring said properties for the City of Omaha or the people residing in said City."

and

WHEREAS, the Omaha District has been duly organized as a public corporation and political subdivision of the State of Nebraska for the purpose of acquiring the trust property; and

WHEREAS, the Committee, in performance of the purpose for which it was created, did, on the 26th day of December, 1944, purchase all of the outstanding Common Stock (consisting of 1,000,000 shares) of Nebraska Power Company; and

WHEREAS, on the 19th day of November, 1946, the Committee subscribed for and paid $50,000.00 in cash for 5,000 shares being all of the capital stock of Western Iowa Power Company, an Iowa corporation; and

WHEREAS, on the 2nd day of December, 1946, the Committee transferred to Western Iowa Power Company 77,000 shares of the Common Stock of Nebraska Power Company in exchange for $3,350,000 in aggregate principal amount of the securities of said Western Iowa Power Company which securities, when issued, will be held by the Committee; and

WHEREAS, the said 77,000 shares of Common Stock of Nebraska Power Company was, on December 2, 1946, liquidated by Nebraska Power Company transferring to Western Iowa Power Company certain properties and assets in exchange therefor; and

WHEREAS, the Committee has this day sold and delivered to the Omaha District 923,000 shares, being all of the Common Stock of the Nebraska Power Company representing full and complete ownership of said company, free and clear of all liens and encumbrances;

NOW, THEREFORE, for and in consideration of the premises and mutual promises and covenants herein contained and other good and valuable considerations, the parties hereto hereby agree as follows:

Section 1. Omaha District hereby acknowleges the existence of the trust created for the benefit of the public by the provisions of the Articles of Incorporation of the Committee and the contracts and agreements hereto entered between the Committee and Loup River Public Power

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District governing the ownership, management, control and disposition of the stock, bonds and other securities now, and formerly, owned by the Committee.

Section 2. The Committee acknowledges and accepts the Omaha District as the owner of, and entitled to, the beneficial interest in and to the trust created as aforesaid, and hereby agrees from time to time to pay over to, and to transfer to, the Omaha District all property and assets of said trust of any kind and character whatsover, including the proceeds of the sale of the Iowa company securities owned by the Committee, remaining after the payment of all its liabilities, in accordance with the provisions of its corporate character and the contracts and agreements heretofore entered into between the Committee and Loup River Public Power District.

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their hands and seals the day and year first above written.

OMAHA ELECTRIC COMMITTEE, INC.
By T. H. MAENNER
President

OMAHA PUBLIC POWER DISTRICT
J. M. Harding
President

ATTEST:

KARL O. BROWN
Secretary

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MINUTES OF MEETING OF BOARD OF DIRECTORS

OF

WESTERN IOWA POWER COMPANY

Held December 2, 1946
at 11:05 o'clock A.M.
(Eastern Standard Time)

A meeting of the Board of Directors of Western Iowa Power Company, an Iowa corporation, was held on the 2nd day of December, 1946, at the hour of 11:05 o'clock A.M. (Eastern Standard Time), in the Directors Room of Guaranty Trust Company of New York (whose address is 140 Broadway), in the City of New York, State of New York, pursuant to waiver of notice thereof signed by all of the members of the Board of Directors of Western Iowa Power Company. A copy of said waiver is attached to these minutes.

The following Directors were present:

T. H. Maenner
Sidney J. Cullingham
Bernard R. Stone
Emil E. Wolf
B. H. Baer
Gerald Collins

the same being all of the Directors of the Company and a quorum for the transaction of business.

Mr. Sidney J. Cullingham, President of the Company, presided at the meeting and Mr. Bernard R. Stone, Secretary, recorded the minutes.

The President commented that Omaha Electric Committee, Inc. had made payment of the subscription price for 5,000 shares of stock of Western Iowa Power Company, and that in accordance with the provisions of the Articles of Incorporation of the Company it was now proper for the Company to commence the transaction of business.

There was then introduced and read a draft of a proposal to be made by this Company to Omaha Electric Committee, Inc., a Nebraska non-profit corporation, reading as follows, to-wit:

"December 2, 1946

Omaha Electric Committee, Inc.,
a Nebraska corporation:

The undersigned, Western Iowa Power Company, an Iowa corporation (hereinafter called the "Company"), hereby offers to purchase from Omaha Electric Committee, Inc. (hereinafter called the "Committee"), 77,000 shares

of common capital stock of Nebraska Power Company, a Maine corporation, and agrees to deliver in exchange therefor its bonds and debentures or bonds in the aggregate principal amount of $3,350,000., described as follows, to-wit:

(a) Bonds of the Company in the principal amount of $1,800,000; bearing interest at the rate of 3-1/2% per annum, payable semi-annually, maturing 25 years from date of such bonds, secured by a lien on substantially all of the assets of the Company, issued under an indenture having provisions which, in view of the character of the security, are reasonable and appropriate.

(b) $1,550,000. principal amount of debentures or bonds of the Company, maturing 30 years from the date of said debentures or bonds, except as the parties may otherwise mutually agree, bearing interest at the rate of 4-1/4% per annum, payable semi-annually, issued under an indenture appropriate in view of the character of the securities issued and with such security as you may require.

It is agreed that the certificates evidencing 77,000 shares of common capital stock of Nebraska Power Company will be delivered and transferred to the undersigned forthwith and that within ninety days after such delivery the undersigned shall be obligated to deliver to Omaha Electric Committee, Inc. the securities above described.

Please evidence your acceptance hereof on a counterpart which is delivered to you herewith.

Western Iowa Power Company

By Sidney J. Cullingham
President

The above proposal is hereby accepted by Omaha Electric Committee, Inc. on this 2nd day of December, 1946.

Omaha Electric Committee, Inc.

By J. H. Moenner
President"

A discussion was had as to the advisability of such proposal and thereafter, upon motion duly made, seconded and unanimously carried, the following resolution was adopted:

Be It and It Is Hereby Resolved by the Board of Directors of Western Iowa Power Company, an Iowa corporation, that the President or a Vice-President of this Company be and he is hereby authorized to acquire from Omaha Electric Committee, Inc. certificates evidencing 77,000 shares of the common capital stock of

Nebraska Power Company, a Maine corporation, and that such officers be further authorized to submit to Omaha Electric Committee, Inc. a proposal for such acquisition in the form presented at this meeting.

Be It Further Resolved that on the acquisition by this Company of certificates evidencing said shares of stock, the officers of this Company be and they are hereby authorized to secure the execution by all of the stockholders of Nebraska Power Company of an instrument approving a plan of partial liquidation which shall read as follows, to-wit:

"Approval of Plan of Partial Liquidation of Nebraska Power Company

The undersigned holders of all of the outstanding stock of Nebraska Power Company, consisting of 1,000,000 shares of common stock, hereby approve a partial liquidation of said Company, consisting of the transfer by Nebraska Power Company to Western Iowa Power Company, an Iowa corporation, of property of Nebraska Power Company described in Exhibit A transmitted herewith upon the simultaneous surrender for cancellation by said Western Iowa Power Company of certificates evidencing 77,000 shares of common stock of Nebraska Power Company, and hereby authorize the Directors of Nebraska Power Company to take all action by them deemed advisable in order to complete such partial liquidation.

DATED this 2nd day of December, 1946.

OMAHA ELECTRIC COMMITTEE, INC.
owner of 922,988 shares

By F. H. Maeuner
President

Attest:
Sidney J. Cullingham
Secretary

WESTERN IOWA POWER COMPANY
owner of 77,000 shares

By Sidney J. Cullingham
President

Attest:
Bernard R. Stone
Secretary

B. H. Bar, owner of one share

[illegible], owner of one share

Sidney J. Cullingham, owner of one share

_____, owner of one share

_____, owner of one share

_____, owner of one share

_____, owner of one share

_____, owner of one share

_____, owner of one share

_____, owner of one share

_____, owner of one share

_____, owner of one share "

"EXHIBIT A.

1. All of the physical properties owned by Nebraska Power Company located in the State of Iowa other than property used or held for use in connection with the operation of a distribution system at Carter Lake, Iowa.

2. Other assets connected with the operation of the properties to be acquired by Western Iowa Power Company, consisting of cash, accounts receivable, inventories, prepaid expenses and other current assets, less certain liabilities, which shall be assumed by Western Iowa Power Company, consisting of accounts payable, accrued taxes, customers' advances, customers' contributions, customers' deposits and accrued interest thereon, other current liabilities, and reserve for injuries and damages, the excess of such assets over such liabilities to equal the net aggregate amount of $35,000., all as selected and determined by Haskins & Sells and R. W. Beck and Associates."

Be It Further Resolved that the President or a Vice-President of this Company be and he is hereby authorized to take all steps and do all acts by such officer deemed advisable in order to secure appropriate corporate action by Nebraska Power Company providing for the carrying out of said plan of partial liquidation and all acts deemed advisable in order to consummate said plan of partial liquidation, including the surrender by this Company to Nebraska Power Company for cancellation of certificates evidencing 77,000 shares of common stock of Nebraska Power Company.

Be It Further Resolved that when and as this Company shall have acquired property pursuant to said plan of partial liquidation, the officers of this Company be and they are hereby authorized to commence the operation of said property and to do all acts by them deemed advisable in connection therewith.

There being no further business to come before the meeting, the same, upon motion duly made, seconded and unanimously carried, was adjourned.

Bernard R. Stone
Secretary

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FILED
DISTRICT OF NEBRASKA
AT ____ M
AUG 4 1952 -1
Clerk
Deputy

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
DISTRICT OF NEBRASKA, OMAHA DIVISION

OMAHA PUBLIC POWER DISTRICT, a public corporation and political subdivision of the State of Nebraska, WESTERN IOWA POWER COMPANY, a corporation, IOWA POWER AND LIGHT COMPANY, a corporation, and OMAHA ELECTRIC COMMITTEE, INC., a corporation,

Plaintiffs,

v.

GEORGE W. O'MALLEY, Collector of Internal Revenue for the United States Internal Revenue Collection District of Nebraska,

Defendant.

Civil No. 63-52

C O M P L A I N T

I

FIRST CAUSE OF ACTION

Plaintiffs complain of defendant, and for their first cause of action, allege:

1. This action arises under the Internal Revenue laws of the United States and more particularly, for the recovery of United States Internal Revenue taxes illegally and unlawfully collected.

2. Omaha Public Power District now is and since August 29, 1945, has been a public corporation and political subdivision of the State of Nebraska, organized and existing under and pursuant to sections 70-601 to 70-679, inclusive, of the Revised Statutes of Nebraska, 1943, as amended, for the purpose of acquiring and operating within the State of Nebraska a public utility, to wit, a publicly owned electric power plant and distribution system. Ever since its organization, said corporation has and it now does maintain its sole place of business in the city of Omaha, County of Douglas, State of Nebraska.

of its articles of incorporation provided:

> H. The Board of Directors of the corporation shall, notwithstanding the broad powers herein granted, conduct the affairs of the corporation for the purpose of ultimately vesting in the City of Omaha, Nebraska, or in some public agency, public body or political subdivision of the State of Nebraska the ownership and operation of properties used in supplying electric energy to the inhabitants of the City of Omaha, Nebraska, and surrounding territory. Any such transfer or any transfer of stock made for the purpose of enabling such public agency, public body or political subdivision to acquire such properties shall be made for a consideration not in excess of an amount found necessary by the Board of Directors of the corporation in order to effect a retirement of all indebtedness and other obligations and preferred stock of the corporation and of corporations controlled by it, or for no consideration if no such indebtedness or preferred stock exists. If the corporation shall at the time of any such transfer own or control any properties in addition to those used in supplying electric energy to the residents of the City of Omaha and surrounding territory, it shall cause the same to be transferred or disposed of in such manner and for such consideration as may be directed by the City, public agency, public body, or political subdivision of the State of Nebraska constituting the transferee under any such transfer. The consideration so received after payment of all expenses shall be paid to such transferee. When and as any public utility properties shall be held or controlled by the corporation after the retirement of all its obligations and those of corporations controlled by it (other than current indebtedness incurred in normal operations) and preferred stock of such controlled corporations, this corporation shall prior to the transfer thereof, as hereinbefore provided, operate such properties substantially without profit and any small profit which may accrue through such operations shall be rebated to consumers from time to time, or paid to the transferee under any transfer made pursuant to the provisions of this subdivision.

II. To carry out these purposes and the general program of the State of Nebraska, as outlined above, on December 15, [illegible], [illegible] Omaha Electric Consumers, Inc., [illegible] and [illegible] and the Board of Directors of Omaha Public Power District [illegible] all were replaced by persons selected by [illegible] Inc., which thereafter controlled the Omaha Public Power District [illegible] the decision of the Supreme Court of Nebraska [illegible] which would enable Omaha Electric Consumers, Inc., to [illegible]

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purpose for which it was organized.

12. Immediately following the acquisition of all of the common stock of Nebraska Power Company (on December 26, 1944) Omaha Electric Committee, Inc. and Loup River Public Power District entered into a contract wherein Omaha Electric Committee, Inc. publicly acknowledged that the acquisition of the common stock of Nebraska Power Company was for the sole purpose of transferring the ownership, operation and management of the properties and assets of Nebraska Power Company to a public corporation and political subdivision of the State of Nebraska for the use and benefit of the public, and it agreed that prior to January 1, 1948, it would either cause all of the Nebraska properties of Nebraska Power Company, plus all net receipts derived from the liquidation of the Iowa properties of Nebraska Power Company, to be sold, transferred and conveyed:

> to a peoples power commission organized under L.B. 204, passed at the 1943 Session of the Nebraska Legislature, or to the City of Omaha, or to some other public agency duly organized under the laws of the State of Nebraska for the purpose of acquiring said properties for the City of Omaha or the people residing in said City.

or to Loup River Public Power District. On the same date, Omaha Electric Committee, Inc. entered into a valid and binding agreement with Marine Midland Bank & Trust Company of New York providing that so long as Omaha Electric Committee, Inc. was indebted to that corporation, Nebraska Power Company would neither declare nor pay any dividends on its common stock in excess of the amount needed by Omaha Electric Committee, Inc. to defray its necessary operating expenses. The indebtedness referred to in that agreement was not paid until December 2, 1946, and no dividend was ever declared or paid upon the common stock of Nebraska Power Company on or subsequent to December 26, 1944.

13. On February 16, 1945, the Supreme Court of Nebraska handed down its decision in State v. Butler, supra, wherein it held that the referendum provisions of the City Charter of Omaha were not applicable to the resolution of the City Council of Omaha adopting

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the provisions of the "Peoples Power Commission Law" of Nebraska, and that therefore, Peoples Power Commission of The City of Omaha had no valid existence. However, the court left unsettled constitutional questions which had been raised. To correct that situation, and to enable Omaha Electric Committee, Inc. to carry out the purposes for which it was organized, and the purpose for which it acquired all of the issued and outstanding common stock of Nebraska Power Company, on May 8, 1945, the Legislature of Nebraska enacted L.B. No. 297, Chapter 157, Laws of Nebraska, 1945, page 515, amending sections 70-604, 70-609, 70-615, 70-626 and 70-670 of the Revised Statutes of Nebraska, 1943, relating to the organization and powers of public power districts. The act contained an emergency clause and hence it became effective immediately.

14. In furtherance of the purpose of the State of Nebraska to cause all power plants and distribution systems in the State of Nebraska to be publicly owned, and in furtherance of the purpose for which Omaha Electric Committee, Inc. was organized, on August 29, 1945, Omaha Electric Committee, Inc. caused Omaha Public Power District to be organized under and pursuant to the provisions of sections 70-601 to 70-679, inclusive, of the Revised Statutes of Nebraska, 1943, as amended, as a public corporation and political subdivision of the State of Nebraska for the express purpose of taking over and operating the electric power plants and distribution system theretofore owned and operated by Nebraska Power Company within the State of Nebraska.

15. Following the organization of Omaha Public Power District, suit was instituted in the District Court of Lancaster County, Nebraska (Louis F. Armbrust v. Wardner G. Scott et al) questioning the constitutionality of the law under which Omaha Public Power District was organized, and the lawful creation of the district. On September 18, 1946, the court handed down its decision holding that:

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Omaha Public Power District is now and has been since its creation and establishment a valid and constitutional public power district and a political subdivision of the state of Nebraska.

No appeal was taken from that decision.

16. On December 1, 1946, Nebraska Power Company retired all of its issued and outstanding preferred stock, leaving Omaha Electric Committee, Inc. the owner of all of the issued and outstanding stock of Nebraska Power Company.

17. On August 6, 1943, the Supreme Court of Nebraska, in State v. Consumers Public Power District, 143 Neb. 753, 10 N.W. 2d 784, 795, had held that a public power district organized under sections 70-701 et seq. of the Compiled Statutes of Nebraska, Supplement 1939 (now section 70-601 et seq., Revised Statutes of Nebraska, 1943) was without power to engage in the business of distributing and selling power in a state other than Nebraska. Accordingly, to accomplish the purpose for which Omaha Electric Committee, Inc. and Omaha Public Power District were organized, it was necessary that the former company cause Nebraska Power Company to dispose of its Iowa properties. To that end, on October 19, 1946, Omaha Electric Committee, Inc. and Omaha Public Power District entered into an agreement under the terms of which Omaha Electric Committee, Inc. agreed to organize a company under the laws of the State of Iowa, to purchase all of its authorized stock and then to transfer to that corporation a pro rata portion of the common stock of Nebraska Power Company in exchange for bonds to be issued by the Iowa Company, and to sell and transfer the remaining stock of Nebraska Power Company to Omaha Public Power District. Pursuant to that agreement, on November 7, 1946, Omaha Electric Committee, Inc. organized Western Iowa Power Company as a corporation under the laws of the State of Iowa, and purchased all of its authorized stock.

18. On November 30, 1946, Nebraska Power Company entered into a contract with Western Iowa Power Company under the terms of which Nebraska Power Company agreed to supply Western Iowa Power Company with such electric power and energy as the latter company

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should need to operate the Iowa distribution system for a period of two years.

19. On December 2, 1946, and in furtherance of the agreement of October 19, 1946, Omaha Electric Committee, Inc. sold and transferred to Western Iowa Power Company and to Omaha Public Power District 77,000 and 923,000 shares, respectively, of the common stock of Nebraska Power Company. On the same day the Iowa properties, except those in the Carter Lake area (an isolated area west of the Missouri River constituting approximately three or four square miles and serving about 375 of the total 94,700 customers served by Omaha Public Power District), were transferred by Nebraska Power Company to Western Iowa Power Company in redemption and cancellation of the 77,000 shares of Nebraska Power Company common stock then owned by the transferee. This left Omaha Electric Committee, Inc. owning $65,377.52 in cash, all of Western Iowa Power Company's issued and outstanding stock and $3,350,000 par value of Western Iowa Power Company's bonds. Omaha Electric Committee, Inc. and Omaha Public Power District thereupon (December 2, 1946) executed a written instrument, wherein Omaha Public Power District acknowledged:

> the existence of the trust created for the benefit of the public by the provisions of the Articles of Incorporation of the Committee [Omaha Electric Committee, Inc.] and the contracts and agreements hereto entered between the Committee and Loup River Public Power District governing the ownership, management, control and disposition of the stock, bonds and other securities now, and formerly, owned by the Committee.

and Omaha Electric Committee, Inc. acknowledged and accepted:

> the Omaha District [Omaha Public Power District] as the owner of, and entitled to, the beneficial interest in and to the trust created as aforesaid, and hereby agrees from time to time to pay over to, and to transfer to, the Omaha District all property, and assets of said trust of any kind and character whatsoever, including the proceeds of the sale of the Iowa Company securities owned by the Committee, remaining after the payment of all its liabilities, in accordance with the provisions of its corporate charter and the contracts and agreements heretofore entered into between the Committee and Loup River Public Power District.

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Thereafter and on the same day, all of the remainder of the assets of Nebraska Power Company, except $25,000 and claims for refund of "income taxes, excess profits taxes, or any other taxes" were transferred by Nebraska Power Company to Omaha Public Power District in redemption and cancellation of all except 13 shares of the 923,000 shares of Nebraska Power Company common stock then owned by Omaha Public Power District, which said 13 shares Omaha Public Power District has continued to and does now own.

20. Beginning with December 2, 1946, for the benefit of Omaha Public Power District on the one hand and the former Iowa customers of Nebraska Power Company on the other, it was necessary that Western Iowa Power Company operate, and it did operate, the Iowa electric distribution system formerly owned and operated by Nebraska Power Company until it could be disposed of at a fair price to interests that would take over the property and furnish electrical energy to the Iowa consumers. During all of that time, all of the issued and outstanding stock of Western Iowa Power Company stood of record in the name of Omaha Electric Committee, Inc., but by virtue of the charter of Omaha Electric Committee, Inc. and the agreement dated December 2, 1946, between Omaha Electric Committee, Inc. and Omaha Public Power District, all of the assets of both Western Iowa Power Company and Omaha Electric Committee, Inc. beneficially belonged to and both of said corporations were actually controlled by Omaha Public Power District.

21. On December 4, 1948, Omaha Electric Committee, Inc., for itself and as trustee for Omaha Public Power District and at the direction of the latter corporation, entered into a memorandum agreement with Iowa Power and Light Company to sell all of the stock and bonds of Western Iowa Power Company to Iowa Power and Light Company for a consideration of $3,430,000 plus the net increase in the earned surplus of Western Iowa Power Company from September 30, 1948,

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to the date of closing of the sale. The provisions of said memorandum agreement were incorporated into a formal agreement executed by the same parties in the same capacities on February 11, 1949. That agreement provided not only for the payment of the $3,430,000 by Iowa Power and Light Company to Omaha Electric Committee, Inc., but it required Iowa Power and Light Company promptly to pay to Omaha Electric Committee, Inc. the amount, if any, by which the earned surplus on the closing date exceeded the amount of the earned surplus as of September 30, 1948. Sections 11 and 12 of that agreement provide in part:

> Section 11. Iowa Power [Iowa Power and Light Company] agrees that at any time prior to the acquisition date, Western Iowa [Western Iowa Power Company] may assign to the Committee [Omaha Electric Committee, Inc.] without consideration any and all claims, whether liquidated or unliquidated, for the refund of federal income taxes by reason of its being exempt from such taxes, in respect of such taxes paid by Western Iowa for any period prior to the acquisition date. * * * After acquisition date, upon the request of the Committee or the District [Omaha Public Power District], Iowa Power will cooperate with either in respect to the filing and prosecution of claims for refund of such taxes, and Iowa Power agrees that such claims may be filed and prosecuted in the name of Iowa Power, if appropriate. * * *
>
> Iowa Power agrees that any and all refunds of federal income taxes which may be received by it or by Western Iowa, by reason of Western Iowa being held exempt therefrom, in respect of such taxes paid by Western Iowa for any period prior to the acquisition date, shall be the property of the Committee, and upon the receipt thereof by Western Iowa or Iowa Power the same shall promptly be paid over to the Committee.
>
> Section 12. Iowa Power agrees that if, after settlement of all taxes (including income taxes) incurred by Western Iowa during any period prior to the date of acquisition, it shall be found that accruals for unpaid taxes, included by Western Iowa in its accounts on the day preceding the date of acquisition after any adjustments thereto determined by the report of Arthur Andersen & Co. [certified public accountants] referred to in Section 10 thereof, were in excess of the amounts actually required to fully pay, settle and discharge such taxes, including all interest and penalty thereon, the excess of such accruals shall be paid over to the Committee.

22. On May 14, 1949, pursuant to the contract of February 11, 1949, referred to in the preceding paragraph, all of the stocks and bonds of Western Iowa Power Company, then owned by Omaha Electric Committee, Inc. as trustee for Omaha Public Power District, were sold and transferred to Iowa Power and Light Company, and on that date

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Western Iowa Power Company was liquidated by the transfer of all of its assets, other than claims for refund of taxes erroneously paid by Western Iowa Power Company, to Iowa Power and Light Company, which company assumed and agreed to pay all of the outstanding liabilities of Western Iowa Power Company at the expense, however, of Omaha Electric Committee, Inc. as trustee for Omaha Public Power District.

23. With respect to any right which Western Iowa Power Company might have to recover taxes paid by or for it, the board of directors of Western Iowa Power Company, at a formal meeting held on May 14, 1949, passed the following resolution:

> WHEREAS, the corporation has pending before the United States Revenue Department certain claims for the refund of federal income taxes for the fiscal year of 1947 in the sum of $92,850.80 and for the fiscal year of 1948 in the sum of $72,600.00; and
>
> WHEREAS, under the Agreement dated February 11, 1949, between Omaha Electric Committee, Inc. (for itself and as trustee for Omaha Public Power District) and Iowa Power and Light Company, it was provided that said Committee should be entitled to any refunds of federal income taxes paid by this Company for any period prior to the date of acquisition by Iowa Power and Light Company from said Committee of all issued and outstanding securities of this Company pursuant to said Agreement, in the event that any such refunds should be made by reason of this Company's being held exemptfrom such taxes; and
>
> WHEREAS, this Company should now take action to carry out the terms and conditions of said Agreement with respect to such refunds; and
>
> WHEREAS, in the plan of liquidation of Nebraska Power Company, of which the properties of this corporation were a part, a trust agreement was entered into between Omaha Electric Committee, Inc. and Omaha Public Power District whereby said Committee is Trustee for said District, and Western Iowa Power Company is desirous of doing its part to effect and complete such plan.
>
> NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of Western Iowa Power Company that Western Iowa Power Company be, and it is hereby, declared to hold the aforesaid claims for refund of federal income taxes as a trustee for said Omaha Electric Committee, Inc., and for said Omaha Public Power District, for the sole purpose of prosecuting and collecting such refunds and paying the final proceeds thereof (if any) over to said Committee and/or District as their interests may appear; and that by this resolution Western Iowa Power Company hereby divests itself of any and all interest in or to such claims and the proceeds thereof, if any, except such bare legal title as may be necessary to enable it to prosecute and

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collect the same, all beneficial interest in and to such claims and the proceeds thereof, if any, being hereby transferred to and vested in said Omaha Electric Committee, Inc., and said Omaha Public Power District; provided, however, that nothing in this resolution shall be or be construed to be an assignment of such claims as against the United States and provided further that this Company shall be and it is hereby authorized and directed to prosecute such claims and collect the proceeds thereof, if any, in its own name and on its own behalf as the person lawfully entitled so to do.

24. On July 15, 1949, Omaha Electric Committee, Inc. as trustee for Omaha Public Power District distributed to Omaha Public Power District all of the trust estate, which included its interest in any and all claims for refund of taxes erroneously paid by Western Iowa Power Company.

25. During the period December 26, 1944, to December 2, 1946, Omaha Electric Committee, Inc. held legal title to all of the common stock of Nebraska Power Company, and the properties of the latter were controlled and operated by Omaha Electric Committee, Inc. as a public utility, to wit, a publicly owned electric and power plant, and all of the common stock of Nebraska Power Company was held by Omaha Electric Committee, Inc. in trust for the use and benefit of either Loup River Public Power District or Omaha Public Power District, which were public corporations and political subdivisions of the State of Nebraska, and during all of the period December 2, 1946, to May 14, 1949, Omaha Electric Committee, Inc. held legal title to all of the common stock of Western Iowa Power Company in trust for Omaha Public Power District, which was and continued to be a public corporation and political subdivision of the State of Nebraska, and during all of that period the properties of Western Iowa Power Company were controlled and operated by Omaha Public Power District for its own use and benefit, for the use and benefit of its consumers, and as a public utility, to wit, a publicly owned electric and power plant.

26. From the date of its organization to May 14, 1949, Western Iowa Power Company was merely an agent and instrumentality of Omaha Public Power District, engaged exclusively in operating a public

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utility, to wit, a publicly owned electrical power plant and distribution system. All of the income derived by it was derived from a public utility, and all of its income accrued to Omaha Public Power District, a political subdivision of the State of Nebraska. Accordingly, all of the income of Western Iowa Power Company was exempt from Federal income tax by the provisions of section 116(d) of the Internal Revenue Code (26 U.S.C.A., section 116(d)).

27. On February 12, 1948, Western Iowa Power Company filed with the defendant as Collector of Internal Revenue at his office in Omaha, Nebraska, a Federal income tax return for the period December 2, 1946, to November 30, 1947, disclosing a tax of $92,850.80, which said sum was erroneously paid by Western Iowa Power Company to the defendant as said Collector at his office in Omaha, Nebraska, on the dates and in amounts as follows:

Date	Amount
February 12, 1948	$23,212.70
June 11, 1948	23,212.70
August 2, 1948	23,212.70
November 8, 1948	23,212.70
Total	$92,850.80

28. During all of said period, December 2, 1946, to November 30, 1947, inclusive, Western Iowa Power Company derived all of its income from a public utility, to wit, a publicly owned electric and power plant, and all of its income for that period accrued to Omaha Public Power District, a political subdivision of the State of Nebraska, and therefore, all of said income was exempt from Federal income tax by the provisions of section 116(d) of the Internal Revenue Code (26 U.S.C.A., section 116(d)), and hence, Western Iowa Power Company did not owe said tax and said tax was illegally and unlawfully collected from Western Iowa Power Company by the defendant, and plaintiffs are entitled to recover the full amount thereof for and on behalf of Omaha Public Power District.

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THIS AGREEMENT, by and between OMAHA ELECTRIC COMMITTEE, INC., a corporation, organized and existing under and by virtue of the laws of the State of Nebraska, Party of the First Part (hereinafter for convenience referred to as the "Committee"), for itself and as Trustee for Omaha Public Power District, a political subdivision of the State of Nebraska (hereinafter for convenience referred to as the "District"), and IOWA POWER AND LIGHT COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Iowa, Party of the Second Part (hereinafter for convenience referred to as "Iowa Power"),

WITNESSETH:

WHEREAS, on December 4, 1948, the parties hereto entered into an agreement for the purchase by Iowa Power from the Committee of all the issued and outstanding stock and bonds of Western Iowa Power Company (hereinafter for convenience referred to as "Western Iowa"), subject to the conditions hereinafter set forth;

WHEREAS, Iowa Power on December 4, 1948, delivered to the Committee its check in the amount of $100,000.00 as a down payment on the purchase price of said securities to be held by the Committee subject to the terms and conditions specified in Section 14 hereof; and

WHEREAS, it is the desire of the parties hereto to set forth in a detailed contract the terms and conditions of said agreement for the purchase of said securities:

Now, THEREFORE, it is hereby agreed by and between the parties hereto as follows:

SECTION 1. That for and in consideration of the purchase price therefor to be paid by Iowa Power, and in further consideration of the agreements and undertakings of Iowa Power, as hereinafter set forth and contained, the Committee has agreed, and does hereby agree, on the conditions as herein-

after stated, to sell, assign, transfer and convey unto Iowa Power the securities more specifically described as follows, to-wit:

(a) Five thousand (5,000) shares of the capital stock of Western Iowa, a corporation organized and existing under and by virtue of the laws of the State of Iowa, and having its principal place of business in the City of Council Bluffs, Pottawattamie County, Iowa, of the par value of Ten Dollars ($10.00) for each share; the same constituting all the authorized, issued and outstanding stock of Western Iowa; and

(b) Bonds of said Western Iowa aggregating in face value Three Million, Three Hundred Fifty Thousand Dollars ($3,350,000.00), issued under and secured by a mortgage and deed of trust dated as of December 2, 1946, and executed by Western Iowa to Edward F. Leary, as Trustee; said bonds being more specifically described as follows:

(1) A bond (or bonds) of, or aggregating, One Million, Eight Hundred Thousand dollars ($1,800,000.00) principal amount, known as "Western Iowa Power Company First Mortgage Bond(s), 3½% Series, due 1971."

(2) A bond (or bonds) of, or aggregating, One Million, Five Hundred Fifty Thousand Dollars ($1,550,000.00) principal amount, known as "Western Iowa Power Company First Mortgage Bond(s), 4¼% Series, due 1976."

SECTION 2. Subject to the conditions precedent set forth in Section 3 hereof and subject to the adjustments in the purchase price hereinafter specified, Iowa Power agrees to purchase from the Committee the aforesaid securities and to pay to the Committee therefor on the acquisition date:

(a) The sum of Three Million, Four Hundred Thirty Thousand Dollars ($3,430,000.00), less the sum of One Hundred Thousand Dollars ($100,000.00) heretofore paid by Iowa Power to the Committee as a down payment

day of the first succeeding month after the fulfillment of all of the said conditions precedent specified in said paragraphs (a), (b) and (c), or (ii) such other day as shall be mutually agreed upon by the parties hereto. Unless some other time shall be mutually agreed upon by the parties hereto, the closing on the acquisition date shall begin at 10:00 A. M., Central Standard Time, and the place of closing on the acquisition date shall be at the office of the Committee at Omaha, Nebraska, or such other place as shall be mutually agreed upon by the parties hereto.

Upon the acquisition date, Iowa Power shall pay to the Committee the amounts specified in Section 2 hereof upon the delivery by the Committee to Iowa Power of the securities described in Section 1 hereof with all necessary transfer stamps attached and canceled and with the certificates of stock representing the shares to be transferred properly and effectively endorsed for transfer, and with the bond or bonds of each series duly endorsed or assigned in the manner required by the mortgage and deed of trust dated as of December 2, 1946, with all unpaid coupons, if any, attached, so as to effectually vest title and ownership to all such securities in Iowa Power; all of such transfers, endorsements and assignments to be in a form satisfactory to Iowa Power.

SECTION 6. The Committee represents and warrants:

(a) That it is a corporation, organized and existing, and in good standing, under the laws of the State of Nebraska; and it has full power and authority to enter into this agreement; that the execution and delivery of this agreement and the consummation of the transaction herein provided for have been duly authorized by its Board of Directors and have been approved by Omaha Public Power District; that in the opinion of counsel for the Committee no other consent or approval, of or by any governmental body or otherwise, is requisite to the validity of such execution, delivery or consummation by the Committee;

(b) That Western Iowa is a corporation duly organized, existing and in good standing under the laws of the State of Iowa; that its authorized capital stock consists of five thousand (5,000) shares of the par value of Ten Dollars ($10.00) per share; that all of said shares are validly issued and outstanding, are fully paid and non-assessable; and that said shares constitute and will constitute on the acquisition date all the authorized, issued and outstanding stock of Western Iowa;

(c) That the funded debt of Western Iowa consists solely of the bonds described in Section 1(b) hereof; that said bonds are valid obligations of Western Iowa and validly and lawfully issued under the provisions of the mortgage and deed of trust dated as of December 2, 1946, executed by Western Iowa to Edward F. Leary, as Trustee, and that no other bonds will be issued or outstanding under said mortgage and deed of trust on the acquisition date; that the properties of Western Iowa are, and will be on the acquisition date, subject to no lien or encumbrance (except the lien or liens, if any, of current unpaid taxes) other than the lien created by the above-mentioned mortgage and deed of trust; and that no default exists, or will exist on the acquisition date, with respect to the payment of interest due on said bonds, or with respect to any covenant of Western Iowa contained in said mortgage and deed of trust;

(d) That the Committee now has, and on the acquisition date will have, good title to all of the outstanding shares of capital stock of Western Iowa free and clear of all liens and encumbrances thereon; that the Committee now has, and on the acquisition date will have, good title to all of the bonds described in Section 1(b) hereof; and that on the acquisition date the Committee will have full right and lawful authority to sell, transfer, assign and deliver said shares of stock and said bonds to Iowa Power in accordance with this agreement;

(e) That the balance sheet of Western Iowa, dated as of September 30, 1948, and the statement of income and earned surplus of the company for the twelve months ended September 30, 1948, hereto attached, and marked

Exhibit "A", correctly present the financial condition and the results of operations of the company at such date and for the period covered thereby; that provision has been made in said balance sheet to the extent necessary to conform to generally accepted accounting practices for all liabilities of the company, whether fixed or contingent, liquidated or unliquidated, existing on September 30, 1948; and that no material adverse change in the financial condition of the company or its operations has occurred since September 30, 1948, excepting changes occurring in the ordinary course of business;

(f) That the current assets shown on the balance sheet of Western Iowa as of September 30, 1948, were sound and of a value equal to the amount shown thereon, less the reserves applicable thereto;

(g) That Exhibit "B" attached hereto correctly lists and describes all tracts and parcels of land now owned by Western Iowa;

(h) That Exhibit "C" attached hereto correctly lists and describes, with expiration dates, all franchises now held by Western Iowa for furnishing electric service in cities and towns;

(i) That Exhibit "D" attached hereto correctly lists and describes:

(1) All unexpired leases and contracts, including power purchase contracts, to which Western Iowa is a party, except contracts for the supplying of electric energy at published rate schedules to its customers and contracts for the sale or lease of appliances; and

(2) All litigation now pending to which Western Iowa is a party or which, to the knowledge of the Committee, is threatened against Western Iowa;

(j) That Western Iowa has good and merchantable title to all of its real and personal property, subject to the lien of the mortgage and deed of trust dated as of December 2, 1946, executed by Western Iowa to Edward F. Leary, as Trustee, and that the contracts and leases described on Exhibit "D" attached hereto are cancel-

lable by Western Iowa at any time, at its election, and will be so cancellable on the acquisition date, unless otherwise indicated on the said Exhibit.

SECTION 7. Iowa Power represents and warrants:

(a) That it is a corporation organized and existing, and in good standing, under the laws of the State of Iowa; that it has full power and authority to enter into this agreement; that the execution and delivery of this agreement and the consummation of the transaction herein provided for have been duly authorized by its Board of Directors;

(b) That it is purchasing the securities of Western Iowa described in Section 1(a) hereof for its own account and investment and not with a view to, or for resale in connection with, the distribution thereof, nor with any present intention of distributing or reselling said securities.

SECTION 8. It is agreed by the parties hereto that the representations and warranties made by each and set forth in Sections 6 and 7 hereof shall continue and survive the acquisition date, except that no action for the breach of any warranty or representation contained in paragraphs (e), (f), (g), (h), (i) or (j) in Section 6 hereof, may be instituted or maintained unless commenced prior to the expiration of four (4) years after the acquisition date.

SECTION 9. The Committee agrees as follows:

(a) That it will cause Western Iowa to operate and maintain its properties in substantially as good condition of repair and running order as they were in on September 30, 1948, and will cause it to operate such properties in substantially the manner in which they were then being operated, changes in the ordinary course of business being excepted; that no effort will be made by Western Iowa during the period from September 30, 1948, to the acquisition date to reduce operating expenses and increase earnings in any way that would impair the value of its properties or the quality of its service;

SECTION 20. This agreement shall be binding upon and inure to the benefit of the respective parties hereto and their respective successors and assigns.

SECTION 21. Nothing herein contained shall be construed to prevent the liquidation and dissolution of Western Iowa by Iowa Power at any time after the consummation of the purchase of securities provided for herein.

SECTION 22. The Committee, as the Trustee for and as an instrumentality of the District, has declared its intention of transferring to the District all of its net assets, including the proceeds of claims for refund of taxes, whereupon the District will assume the Committee's obligations under this contract, it being understood that such transfer and assumption will be made within a reasonable time after the date of acquisition and the payment of the earned surplus hereinbefore referred to.

It is agreed that when written notice, signed by the Committee and the District, has been given to Iowa Power, that said assets have been transferred to the District and the District has assumed the liabilities of the Committee, all obligations of Iowa Power under this contract will be to the District only, and all obligations of the Committee under this contract will be the obligations of the District, and the Committee shall thereupon be released from any further liability hereunder.

The approval of this contract by the District signifies the agreement of the District to its assuming and fulfilling the obligations of the Committee hereunder.

IN WITNESS WHEREOF, each of the parties hereto has caused this agreement to be executed in triplicate by its president or a vice president and its corporate seal to be hereunto affixed

and attested by its secretary or an assistant secretary, thereunto duly authorized, all on this 11th day of February, 1949.

OMAHA ELECTRIC COMMITTEE, INC.,

(CORPORATE SEAL) By T. H. MAENNER
President.

Attest:

W. W. WENSTRAND
Assistant Secretary

IOWA POWER AND LIGHT COMPANY,

(CORPORATE SEAL) By C. A. LELAND
President.

Attest:

L. E. SLADE
Secretary

Approved this 11 day of February, 1949.

OMAHA PUBLIC POWER DISTRICT,

(CORPORATE SEAL) By J. M. HARDING
President.

Attest:

T. F. HANLEY
Assistant Secretary

EXHIBIT A
Page 1

BALANCE SHEET
WESTERN IOWA POWER COMPANY
At September 30, 1948

	ASSETS AND OTHER DEBITS	This Date
Utility Plant	Utility plant—Beginning of year	$3,386,369.46
	Utility plant—Net additions during current year	8,034.60
	Total utility plant completed	$3,394,404.06
	Expenditure requisitions—Construction work in progress	$ 414,204.07
	Construction contract advances	
	Total construction work in progress	$ 414,204.07
	Total utility plant	$3,808,608.13
Investments and funds	Other physical property	
	Investments in associated companies	
	Other investments	
	Sinking funds	
	Miscellaneous special funds	
	Total investments and fund accounts	
Current and Accrued Assets	Cash	$ 180,644.91
	Special deposits—Interest special deposits	
	Working funds	1,500.00
	Temporary cash investments	
	Notes receivable	
	Accounts receivable—Customers	125,909.85
	Accounts receivable—Other	3,502.30
	Notes receivable from associated companies	
	Accounts receivable from associated companies	
	Interest and dividends receivable	
	Rents receivable	
	Material and supplies	48,709.67
	Prepaid taxes	
	Other prepayments	670.13
	Other current and accrued assets	464.54
	Total current and accrued assets	$ 361,401.40
Deferred Credits	Unamortized debt discount and expense	$ 3,435.52
	Extraordinary property losses	
	Preliminary survey and investigation charges	
	Clearing accounts	
	Expenditure requisitions—Retirement work in progress	15,455.56
	Other work in progress	
	Other deferred debits	
	Total deferred debits	$ 18,891.08
Cap Stk Exp	Capital stock expense	
	Total capital stock expense	
Reacq Cap Stk	Reacquired capital stock—	
	Total reacquired capital stock	
	Contra assets	
	Totals	$4,188,900.61

EXHIBIT A
Page 2

BALANCE SHEET
WESTERN IOWA POWER COMPANY
At September 30, 1948

	LIABILITIES AND OTHER CREDITS	This Date
Capital Stk	Common (Par value)	$ 50,000.00
	Preferred (Par value)	
	Preferred (Par value)	
	Total capital stock	$ 50,000.00
Debt Long-Term	Bonds (net)	$3,350,000.00
	Advances from associated companies	
	Miscellaneous long-term debt	
	Total long-term debt	$3,350,000.00
Current and Accrued Liab.	Notes payable	
	Accounts payable	$ 96,120.45
	Notes payable to associated companies	
	Accounts payable to associated companies	
	Dividends declared	
	Matured long-term debt	
	Matured interest	
	Customers' deposits	53,011.48
	Taxes accrued	153,125.26
	Interest accrued	58,943.05
	Preferred dividends accrued	
	Other current and accrued liabilities	8,092.32
	Total current and accrued liabilities	$ 369,292.56
Deferred Credits	Unamortized premium on debt	
	Customers' advances for construction	$ 5,964.99
	Other deferred credits	254.12
	Total deferred credits	$ 6,219.11
Reserves	Reserve for property retirement	$ 148,978.01
	Reserve for amortization of limited-term investments	4,031.07
	Reserve for amortization of util plant acquisition adjustments	
	Reserve for uncollectible accounts	4,847.84
	Insurance reserve	
	Injuries and damages reserve	10,641.02
	Inventory adjustment reserve	3,010.83
	Other reserves	966.98
	Total reserves	$ 172,475.75
	Contributions in aid of construction	$ 1,770.26
	Contra liabilities	
Surplus	Capital surplus	
	Earned surplus	239,142.93
	Total surplus	$ 239,142.93
	Totals	$4,188,900.61

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MINUTES OF SPECIAL MEETING OF THE BOARD
OF DIRECTORS OF WESTERN IOWA POWER COMPANY
HELD AT TWO O'CLOCK P.M., MAY 14, 1949, AT
THE OFFICE OF THE COMPANY AT COUNCIL BLUFFS,
IOWA.

Pursuant to the adjournment of the special meeting of the Board of Directors of Western Iowa Power Company held at the Directors' Room of Omaha Public Power District, Electric Building, Omaha, Nebraska, at 9:00 a.m., May 14, 1949, the meeting reconvened without further notice at 2:00 p.m., May 14, 1949, at the office of the Company in Council Bluffs, Iowa. The following directors were present: Mr. L. E. Slade, Mr. H. B. Hoffhaus, Mr. Geo. C. Huck, Mr. E. W. Cowdry, Mr. R. L. Read, and Mr. Cyrus A. Leland, III, being all of the directors of the Company.

Upon motion of Mr. Read, duly seconded and duly carried by unanimous vote, Mr. L. E. Slade was elected Chairman of the reconvened meeting, and Mr. E. W. Cowdry was elected Secretary of the reconvened meeting and instructed to keep these minutes.

The Chairman then presented to the meeting the written resignation of Mr. T. F. Hanley as Assistant Secretary and Assistant Treasurer of the Company, effective upon acceptance by the Board, and the written resignation of Mr. F. J. Moylan as Assistant Secretary and Assistant Treasurer of the Company, effective upon acceptance by the Board. The resignations were accepted by unanimous vote of the Board.

The Chairman then stated that inasmuch as all the officers of the Company had resigned, and their resignations had been accepted, it was desirable to elect successors to certain of the vacancies so created, and asked for nominations.

Mr. Read nominated Mr. L. E. Slade for the office of President of the Company; Mr. H. B. Hoffhaus for the office of Vice-President; Mr. E. W. Cowdry for the office of Secretary; and Mr. Geo. C. Huck for the office of Treasurer.

There were no further nominations. A vote was taken as to each nominee, and each nominee was unanimously elected; it being provided that each officer should serve without compensation until his respective successor should be elected.

The Chairman then stated that in connection with its application to the Securities and Exchange Commission for authority to purchase Western Iowa Power Company, Iowa Power and Light Company had represented to the Commission that it would cause Western Iowa Power Company to increase the reserve for depreciation carried on the books of this Company, by transferring to such reserve so much of the surplus of this Company as might be necessary to increase such reserve to approximately twenty per cent (20%) of the Company's depreciable utility plant account, all of such accounting entries to be made in accordance with the plan therefor presented to the Securities and Exchange Commission and in accordance with proper accounting practice as determined by Messrs. Arthur Andersen & Co.

Whereupon the following resolutions, on motion duly made by Mr. Read, and seconded by Mr. Leland, and unanimously carried, were adopted:

> WHEREAS, this Company is now wholly owned by Iowa Power and Light Company; and
>
> WHEREAS, Iowa Power and Light Company desires to increase the reserve for depreciation carried on the books of this Company;
>
> NOW THEREFORE, BE IT RESOLVED, that so much of the surplus of this Company as is required to increase the reserve for depreciation carried on the books and accounts of this Company, after such reserve has been augmented by adding thereto the amount of historical reserve for depreciation applicable to the properties of this Company on the books of its predecessor companies, to twenty per cent (20%) of the depreciable utility plant account, be and it is hereby transferred and appropriated to the reserve for depreciation of this Company; for the purpose of this resolution the amount of surplus available for such purpose shall be the amount of surplus of the Company at the close of business on May 13, 1949, as found and determined by Messrs. Arthur Andersen & Co. pursuant to the terms of the Agreement, dated February 11, 1949, between Omaha Electric Committee, Inc., and Iowa Power and Light Company; and be it

FURTHER RESOLVED, that the officers of this Company be and they are hereby authorized to cause the appropriate entries to be made in the books of account of this Company to reflect such appropriation of surplus to reserve for depreciation; and be it

FURTHER RESOLVED, that such appropriation of surplus to reserve for depreciation shall in no way affect the obligations of either Iowa Power and Light Company or Omaha Electric Committee, Inc., under the aforesaid Agreement dated February 11, 1949, with respect to the adjustment in the purchase price of all the outstanding securities of this Company to be determined by the amount of the increase or decrease in earned surplus of this Company for the period from September 30, 1948, to the close of business on May 13, 1949.

The Chairman then stated that in connection with its application to the Securities and Exchange Commission for authority to purchase Western Iowa Power Company, Iowa Power had stated that it would cause the liquidation and dissolution of Western Iowa Powe Company as soon as practicable after the consummation of the purchase; that the purchase by Iowa Power and Light Company of all of the outstanding securities of Western Iowa Power Company had been consummated that morning, May 14, 1949; that a plan for the liquidation and eventual dissolution of Western Iowa Power Company had been prepared, entitled "Western Iowa Power Company - Agreement and Plan of Liquidation", and dated May 14, 1949; that said plan had been approved and adopted by the Board of Directors of Iowa Power and Light Company at its special meeting held at 9:00 a.m. at the offices of Iowa Power and Light Company in Des Moines, Iowa; and that a copy of said plan had been transmitted to him for presentation to this meeting.

The document entitled "Western Iowa Power Company - Agreement and Plan of Liquidation" was thereupon read and examined by the directors, and after consideration and discussion thereof, the following resolution was moved by Mr. Read and seconded by Mr. Leland and unanimously carried:

BE IT RESOLVED, that the plan of liquidation of Western Iowa Power Company, dated May 14, 1949, and this day approved by the Board of Directors of Iowa Power and Light Company, in words as follows:

AGREEMENT AND PLAN OF LIQUIDATION

WHEREAS, Iowa Power and Light Company (hereinafter referred to as Iowa Power) is the owner and holder of all the outstanding capital stock of Western Iowa Power Company (hereinafter referred to as Western Iowa), also is the owner and holder of the entire issue of bonds of Western Iowa, aggregating $3,350,000 in principal amount, issued under and secured by a Mortgage and Deed of Trust dated December 2, 1946, executed by Western Iowa to Edward F. Leary, as Trustee; and

WHEREAS, Iowa Power is lawfully authorized to acquire, own and operate the utility distribution system now owned and operated by Western Iowa; and

WHEREAS, Iowa Power, being the sole stockholder of Western Iowa, has determined to cause Western Iowa to liquidate and dissolve, in accordance with the plan of liquidation hereinafter set forth; and

WHEREAS, the plan of liquidation has been duly adopted and approved by the unanimous vote of all the issued and outstanding capital stock of Western Iowa at a special stockholder's meeting called and held at the offices of the Company in Council Bluffs, Iowa, on the 14th day of May, 1949, for the purpose of acting upon such plan, and has been approved and adopted by the Board of Directors of Western Iowa at a special meeting duly called and held at the offices of the Company in Council Bluffs, Iowa, this 14th day of May, 1949, and has been approved and adopted by the Board of Directors of Iowa Power at a special meeting duly called and held at the offices of the Company in Des Moines, Iowa, on this 14th day of May, 1949;

NOW, THEREFORE, it is hereby agreed by and between Iowa Power and Western Iowa, as follows:

PLAN OF LIQUIDATION

1. Western Iowa shall distribute, transfer, assign and convey to Iowa Power, on May 14, 1949, all its property and assets of every kind and nature whatsoever, and wherever situate, including cash, notes, bills and accounts receivable, leases, contracts, franchises, and all other property rights or interests, both tangible and intangible; such property and assets to be received by Iowa Power in full payment of the above-mentioned bonds, aggregating $3,350,000 in principal amount, and of the accrued unpaid interest thereon, and in complete liquidation, cancellation and redemption of all issued and outstanding shares of the capital stock of Western Iowa, to-wit, 5,000 shares.

2. Western Iowa shall execute and deliver to Iowa Power on May 14, 1949, all deeds, bills of sale, releases, assignments, and other documentary evidence necessary to vest in Iowa Power all the

right, title and interest of Western Iowa in or to said property and assets, and shall subsequently execute and deliver to Iowa Power as of May 14, 1949, such further instruments as may be necessary or desirable to evidence or perfect Iowa Power's title to said property and assets.

3. Upon the transfer to it of the aforesaid properties and assets, Iowa Power shall surrender to the Secretary of Western Iowa a certificate or certificates evidencing the ownership of all the outstanding capital stock of Western Iowa, aggregating 5,000 shares, for cancellation and retirement, and shall surrender to said Secretary the aforesaid bonds aggregating $3,350,000 in principal amount, as fully paid and for cancellation.

The Secretary of Western Iowa shall forthwith cancel all such stock; and Western Iowa shall forthwith surrender all the aforesaid bonds to the Trustee under the above-mentioned Mortgage and Deed of Trust pursuant to which said bonds were created, issued and secured, and cause said Trustee to cancel and cremate the same, and to deliver to Western Iowa a certificate of such cremation. Western Iowa also shall forthwith request and cause the said Trustee to release the lien of the said Mortgage and Deed of Trust of record, wherever the same may be of record, and to deliver to Iowa Power written evidence of such release.

4. Iowa Power agrees that upon the transfer to it of all the property and assets of Western Iowa on May 14, 1949, it will undertake the operation of the utility properties thus acquired, and that it will assume all obligations of Western Iowa under all executory contracts, unexpired leases, and other undertakings of Western Iowa.

5. Upon the distribution and transfer of its property and assets to Iowa Power, as herein contemplated, Western Iowa shall cease all corporate activities other than such as may be required in order to fully consummate the winding up of its affairs, liquidation and dissolution. The present officers and directors of Western Iowa, or their successors in office, shall remain in office without compensation until such time as the Board of Directors of Western Iowa determines that the corporation shall be dissolved and its charter surrendered.

6. It is agreed by Iowa Power and Western Iowa that the distribution by Western Iowa to Iowa Power on May 14, 1949, of all its property and assets, as herein provided, will accomplish the complete liquidation of Western Iowa Power Company.

7. Western Iowa agrees diligently to proceed to wind up its affairs to the end that the corporation shall be dissolved and its charter surrendered

at the earliest practicable time; and Iowa Power consents that the corporation shall be dissolved at such time as is determined in the discretion of the Board of Directors of Western Iowa.

IOWA POWER AND LIGHT COMPANY,

By _____
Vice-President

WESTERN IOWA POWER COMPANY,

By _____
President

be and it is hereby approved and adopted by the Board of Directors of Western Iowa Power Company subject to the approval thereof at a special stockholder's meeting of Western Iowa Power Company to be called and held for the purpose of acting upon said plan of liquidation; and be it

FURTHER RESOLVED, that the President of Western Iowa Power Company be and he is hereby authorized and directed to call and cause the holding of a special stockholder's meeting of Western Iowa Power Company immediately, for the purpose of acting upon said plan of liquidation.

Upon motion, the meeting was then adjourned to reconve without notice immediately following the adjournment of the spec stockholder's meeting to be held immediately.

* * * * * * * * * * * * * * *

The meeting reconvened at 2:45 p.m., May 14, 1949, at the office of the Company in Council Bluffs, Iowa. Messrs. Slade Hoffhaus, Huck, Cowdry, Read and Leland, being all of the Directo of the Company, were present.

The Chairman stated that a special stockholder's meetir of Western Iowa Power Company had been called and held at 2:30 p. May 14, 1949, at the office of the Company in Council Bluffs, Iow and that said stockholder's meeting had acted upon the plan of liquidation of Western Iowa Power Company and had adjourned sine He submitted to the Board a transcript of the minutes of the stoc holder's meeting, evidencing the adoption by the stockholder's meeting of the plan of liquidation of Western Iowa Power Company. He then stated that, inasmuch as the plan of liquidation of Weste Iowa Power Company had been approved and adopted by all of the

necessary bodies, it was desirable that the Board should take appropriate action to carry out the provisions thereof.

Thereupon the following resolutions were moved by Mr. Read, seconded by Mr. Leland, and unanimously adopted:

WHEREAS, the plan of liquidation of Western Iowa Power Company, embodied in the document entitled "Western Iowa Power Company - Agreement and Plan of Liquidation", dated May 14, 1949, and heretofore approved and adopted by this Board and by the Board of Directors of Iowa Power and Light Company, has now been approved and adopted at a special stockholder's meeting of Western Iowa Power Company; and

WHEREAS, it is desirable that this Board should take action immediately to carry out the provisions of said plan of liquidation;

NOW, THEREFORE, BE IT RESOLVED, that the plan of liquidation of Western Iowa Power Company, embodied in the document entitled "Western Iowa Power Company - Agreement and Plan of Liquidation", dated May 14, 1949, be and it is hereby declared to have been duly and lawfully adopted as the plan of liquidation of Western Iowa Power Company; and be it

FURTHER RESOLVED, that the President of this Company be and he is hereby authorized and directed to sign and execute on behalf of this Company the two counterparts of the aforesaid "Agreement and Plan of Liquidation", and to deliver one fully executed counterpart thereof to Iowa Power and Light Company, and to retain one fully executed counterpart thereof in the permanent records of this Company; and be it

FURTHER RESOLVED, that pursuant to and in fulfillment of the aforesaid "Agreement and Plan of Liquidation", all of the property and assets of Western Iowa Power Company of every kind and nature whatsoever, and wherever situate, including cash, notes, bills and accounts receivable, leases, contracts, franchises, and all other property rights or interests, both tangible and intangible, be and they are hereby distributed, transferred, assigned and conveyed to Iowa Power and Light Company in full payment of all of the issued and outstanding First Mortgage bonds of Western Iowa Power Company, 3½% Series due 1971 and 4½% Series due 1976, aggregating in principal amount $3,350,000, issued under and secured by a Mortgage and Deed of Trust dated December 2, 1946, executed by Western Iowa Power Company to Edward F. Leary as Trustee; and in full payment of the interest accrued on the above-described bonds since the last interest payment date; and in complete liquidation, cancellation and redemption of all of the issued and outstanding shares of the capital stock of Western Iowa Power Company, to-wit, 5,000 shares; all of such bonds and stock being now owned and held by Iowa Power and Light Company; this resolution to be and become effective immediately upon the delivery and surrender on May 14, 1949, to the Secretary of this Company by Iowa Power and

Light Company of the above-described bonds for cancellation, and of the certificate representing 5,000 shares of the capital stock of this Company for cancellation and retirement; and be it

FURTHER RESOLVED, that upon receipt of the aforesaid bonds by the Secretary of this Company he is hereby authorized and directed to mark the same cancelled and paid, and to deliver the same to Edward F. Leary, Trustee under this Company's Mortgage and Deed of Trust dated December 2, 1946, and to request said Trustee to cremate the same and to deliver to this Company a certificate of cremation, and to procure from said Trustee a duly executed instrument releasing and discharging said Mortgage and Deed of Trust and the lien thereof, and to cause said Mortgage and Deed of Trust to be duly released of record wherever the same has been recorded; and be it

FURTHER RESOLVED, that upon the receipt by the Secretary of this Company of the certificate representing all of the issued and outstanding capital stock of this Company, to-wit, 5,000 shares, he is hereby authorized and directed to cancel and retire such stock as completely liquidated and not to be reissued; and be it

FURTHER RESOLVED, that the President and Secretary of Western Iowa Power Company be and they are hereby authorized, empowered and directed to sign and execute in the name of and on behalf of this Company and under its corporate seal, on May 14, 1949, any and all deeds, bills of sale, assignments, conveyances, and any and all other instruments necessary or desirable to vest in Iowa Power and Light Company all of the right, title and interest of Western Iowa Power Company in or to all of its property and assets, and to deliver the same to Iowa Power and Light Company; and subsequently to May 14, 1949, to execute and deliver to Iowa Power and Light Company dated as of May 14, 1949, any and all such further instruments as may be deemed necessary or desirable to evidence or perfect the right or title of Iowa Power and Light Company in and to said property and assets; and be it

FURTHER RESOLVED, that the officers of this Company be and they are hereby authorized and directed to deliver possession to Iowa Power and Light Company of all of the property and assets of this Company on May 14, 1949, upon the receipt from Iowa Power and Light Company of the aforesaid stock and bonds of this Company; and be it

FURTHER RESOLVED, that it is the intent of these resolutions to cause the complete liquidation of Western Iowa Power Company on May 14, 1949, by the distribution of all of its property and assets to Iowa Power and Light Company in complete cancellation, redemption, liquidation and retirement of all of the outstanding securities of Western Iowa Power Company, and that the officers and directors of this Company be and they hereby are authorized and directed to do all such things and to carry out all such actions as they may deem necessary or desirable in order to carry out such intention; and be it

FURTHER RESOLVED, that upon the liquidation of this Company on May 14, 1949, as authorized and provided for by

these resolutions, Western Iowa Power Company shall cease doing business and terminate all of its corporate activitie except such activities as may be necessary in connection with winding up its affairs and its ultimate dissolution.

Upon motion, a fifteen-minute recess was declared in order to permit the officers of the Company to consummate the tr actions provided for in the foregoing resolutions. At the expir of the recess, the Chairman reported to the meeting that the liq ation of the Company had been accomplished in accordance with the plan of liquidation and with the resolutions authorizing the con mation of said plan adopted by the meeting just previous to the recess. Whereupon it was moved by Mr. Read and seconded by Mr. Leland and unanimously carried, that the following resolutions be adopted by the Board of Directors of Western Iowa Power Company:

WHEREAS, Western Iowa Power Company on this 14th day of May, 1949, has been completely liquidated by the distribution, transfer, assignment and conveyance to Iowa Power and Light Company of all of its property and assets in full payment of all of its outstanding bonds and in complete liquidation and cancellation of all of its issued and outstanding capital stock;

NOW, THEREFORE, BE IT RESOLVED, that Western Iowa Power Company be and it is hereby declared to be and to have become completely liquidated on May 14, 1949, and to have ceased all business activity on said date.

There being no further business, the meeting adjourned.

Certified as correct.

L E Slade
Chairman

ATTEST:

E. W. [illegible]
Secretary