

**IN THE COURT OF COMMON PLEAS
TUSCARAWAS COUNTY, OHIO**

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY, OHIO
2022 SEP 15 PM 2:26

JEANNE L. STEPHEN
CLERK OF COURTS

<p>DOVER CHEMICAL CORPORATION,</p> <p style="text-align: center;"><i>Plaintiff,</i></p> <p style="text-align: center;">v.</p> <p>CITY OF DOVER, OHIO,</p> <p style="text-align: center;"><i>Defendant.</i></p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>CASE NO. 2021-CV-02-009</p> <p>JUDGE ELIZABETH THOMAKOS</p> <p><u>DEFENDANT CITY OF DOVER,</u></p> <p><u>OHIO’S ANSWER TO PLAINTIFF</u></p> <p><u>DOVER CHEMICAL</u></p> <p><u>CORPORATION’S AMENDED</u></p> <p><u>COMPLAINT, AND CITY OF DOVER,</u></p> <p><u>OHIO’S COUNTERCLAIM</u></p>
--	--	---

Defendant City of Dover, Ohio (the “City” or “Defendant”) answers and asserts the following defenses to Plaintiff Dover Chemical Corporation’s (“DCC”) Amended Complaint (the “Amended Complaint”):

FIRST DEFENSE

1. Defendant admits the allegations in Paragraph 1.¹
2. Defendant admits the allegations in Paragraph 2.
3. Defendant admits the allegations in Paragraph 3.
4. Defendant admits the allegations in Paragraph 4.
5. Defendant admits the allegations in Paragraph 5.
6. Defendant admits that DCC has facilities on Davis Road with some parcels and

buildings located within the City of Dover and Dover Township. Defendant further admits that Figure A purports to be representation of those facilities. Defendant denies the remaining allegations in Paragraph 6.

¹ Unless otherwise stated, the numbered paragraphs in this Answer correspond to the paragraphs in the Amended Complaint and constitute Defendant’s responses thereto. Except as otherwise expressly set forth in this Answer, Defendant denies each and every allegation and characterization contained in the Amended Complaint, including, without limitation, any allegations or characterizations contained in the Amended Complaint’s headings.

7. Defendant admits the allegations in Paragraph 7.
8. Paragraph 8 sets forth a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 8.
9. Defendant denies the allegations in Paragraph 9.
10. Defendant admits only that Plaintiff attached a letter from Willard E. Seibert to Dan Clark, dated June 1, 1976, as Appendix A to its Amended Complaint (the "1976 Letter").
11. Defendant denies the allegations in Paragraph 11.
12. Defendant denies the allegations in Paragraph 12.
13. In response to the allegations set forth in Paragraph 13, Defendant states that the February 5, 2003 Letter (defined below) speaks for itself. To the extent a response is required, Defendant denies the allegations in Paragraph 13.
14. Defendant admits only that Plaintiff attached a letter from Richard P. Homrighausen to Dwain Colvin, dated February 5, 2003, as Appendix B to its Amended Complaint (the "February 5, 2003 Letter").
15. Defendant lacks information sufficient to form a belief as to the truth of the allegations in Paragraph 15 and, therefore, denies same.
16. Defendant admits that DCC had an obligation to maintain the property within DCC's fence line. Defendant denies the remaining allegations in Paragraph 16.
17. Defendant denies the allegations in Paragraph 17.
18. Defendant admits that Dover Light and Power ("DL&P") provided DCC with electric service pursuant to the governing ordinance, charged the rate set by that ordinance, and DCC paid the set rate. Defendant denies the remaining allegations in Paragraph 18.
19. Defendant admits that DL&P does not generate all of the electricity that it sells to

its customers, and that it purchases and resells electricity. Defendant denies the remaining allegations of Paragraph 19.

20. Defendant denies the allegations in Paragraph 20.

21. Defendant denies the allegations in Paragraph 21.

22. Defendant denies the allegations in Paragraph 22.

23. Defendant admits the allegations in Paragraph 23.

24. Defendant lacks information sufficient to form a belief as to the truth of the allegations in Paragraph 24 and, therefore, denies the same.

25. Defendant lacks information sufficient to form a belief as to the truth of the allegations in Paragraph 25 and, therefore, denies same.

26. Defendant denies the allegations in Paragraph 26.

27. Defendant admits that DCC and the City did not agree to a different electrical rate than the Industrial Rate provided by City rate ordinances. Defendant denies the remaining allegations in Paragraph 27.

28. Defendant denies the allegations in Paragraph 28.

29. Defendant denies the allegations in Paragraph 29.

30. Defendant lacks information sufficient to form a belief as to the truth of the allegations in Paragraph 30 and, therefore, denies same.

31. Defendant denies the allegations in Paragraph 31.

32. Defendant denies the allegations in Paragraph 32.

33. Defendant denies the allegations in Paragraph 33.

34. Defendant denies the allegations in Paragraph 34.

35. Defendant denies the allegations in Paragraph 35.

36. Defendant denies the allegations in Paragraph 36.
37. Defendant denies the allegations in Paragraph 37.
38. Defendant denies the allegations in Paragraph 38.
39. Defendant denies the allegations in Paragraph 39.
40. Defendant denies the allegations in Paragraph 40.
41. Defendant lacks information sufficient to form a belief as to the truth of the allegations in Paragraph 41 and, therefore, denies same.
42. Defendant denies the allegations in Paragraph 42.
43. Defendant admits the allegations in Paragraph 43.
44. Defendant lacks information sufficient to form a belief as to the truth of the allegations in Paragraph 44 and, therefore, denies same.
45. Defendant lacks information sufficient to form a belief as to the truth of the allegations in Paragraph 45 and, therefore, denies same.
46. Defendant lacks information sufficient to form a belief as to the truth of the allegations in Paragraph 46 and, therefore, denies same.
47. Defendant denies the allegations in Paragraph 47.
48. Defendant denies the allegations in Paragraph 48.
49. Defendant admits the allegations in Paragraph 49.
50. Defendant admits only that Plaintiff attached a document entitled "Dover Chemical Industrial Rate Proposal" as Appendix C to its Amended Complaint.
51. In response to the allegations in Paragraph 51, Defendant states that the May 22, 2020 email speaks for itself. To the extent a response is required, Defendant denies the allegations in Paragraph 51.

52. Defendant lacks information sufficient to form a belief as to the truth of the allegations in Paragraph 52 and, therefore, denies same.

53. Defendant lacks information sufficient to form a belief as to the truth of the allegations in Paragraph 53 and, therefore, denies same.

54. Defendant admits only that Plaintiff attached an email from O'Meara to Marc Nolen, dated May 24, 2020, as Appendix D to its Amended Complaint (the "May 24, 2020 Email"). In response to the allegations in Paragraph 54, Defendant states that the May 24, 2020 Email speaks for itself. Defendant denies the remaining allegations in Paragraph 54.

55. Defendant admits only that Plaintiff attached an email from O'Meara to Marc Nolen, dated May 22, 2020, as Appendix E to its Amended Complaint (the "May 22, 2020 Email"). In response to the allegations in Paragraph 55, Defendant states that the May 22, 2020 Email speaks for itself. Defendant denies the remaining allegations in Paragraph 55.

56. Defendant admits the allegations in Paragraph 56.

57. Defendant lacks information sufficient to form a belief as to the truth of the allegations in Paragraph 57 and, therefore, denies same.

58. Defendant denies the allegations in Paragraph 58.

59. Defendant admits only that Plaintiff attached Special Meeting Minutes from the City Council's May 26, 2020 meeting as Appendix F to its Amended Complaint (the "May 26, 2020 Special Meeting Minutes"). In response to the allegations in Paragraph 59, Defendant states that the May 26, 2020 Special Meeting Minutes speak for themselves. Defendant denies the remaining allegations in Paragraph 59.

60. Defendant admits only that Plaintiff attached a document entitled "Dover City Council Emergency Ordinance 29-20" as Appendix G to its Amended Complaint (the "Draft

Emergency Ordinance”). In response to the allegations in Paragraph 60, Defendant states that the Draft Emergency Ordinance speaks for itself. Defendant denies the remaining allegations in Paragraph 60.

61. Defendant denies the allegations in Paragraph 61.

62. Defendant admits only that Plaintiff attached an article published in the Times-Reporter entitled “Dover Chemical may face surcharge” as Appendix H to its Amended Complaint (the “Times-Reporter Article”). In response to the allegations in Paragraph 62, Defendant states that the Times-Reporter Article speaks for itself. Defendant denies the remaining allegations in Paragraph 62.

63. Defendant denies the allegations in Paragraph 63.

64. Defendant denies the allegations in Paragraph 64.

65. Defendant denies the allegations in Paragraph 65.²

66. Defendant denies the allegations in Paragraph 66.

67. Defendant denies the allegations in Paragraph 67.

68. Defendant admits only that DCC posits that Ohio Rev. Code § 2721.01, *et seq.* “authorizes Ohio courts to declare parties’ rights, status, and other legal relations, and DCC requests declarations from this Court.” Defendant denies that DCC is entitled to the declaratory relief that it seeks.

69. In response to Paragraph 69, Defendant admits only that City Council voted unanimously to pass Emergency Ordinance 29-20 on February 15, 2021. Defendant denies the remaining allegations in Paragraph 69.

² The Ohio Court of Claims summarily dismissed the outstanding claims pending in DCC’s public records action. *See Dover Chemical Corporation v. City of Dover*, Ohio Court of Claims Case No. 2020-00576PQ, Judgement Entry dated July 29, 2021.

70. Defendant admits only that Plaintiff attached a document entitled “Dover City Council Amended Emergency Ordinance 29-20” as Appendix I to its Amended Complaint (the “Amended Emergency Ordinance”). In response to the allegations in Paragraph 70, Defendant states that the Amended Emergency Ordinance speaks for itself. Defendant denies the remaining allegations in Paragraph 70.

71. Defendant admits the allegations in Paragraph 71.

72. Defendant admits the allegations in Paragraph 72.

73. Defendant incorporates each and every answer, denial, and response to Paragraphs 1 through 72 as if fully set forth herein.

74. On July 9, 2021, the Court dismissed Count I of DCC’s Amended Complaint with prejudice. *See* 7/9/2021 Judgment Entry at p. 31 (“The Court **FINDS** that Count I of Plaintiff’s Amended Complaint fails to state a claim upon which relief can be granted.”). Accordingly, Defendant is not obligated to respond to Paragraph 74.

75. On July 9, 2021, the Court dismissed Count I of DCC’s Amended Complaint with prejudice. *See* 7/9/2021 Judgment Entry at p. 31 (“The Court **FINDS** that Count I of Plaintiff’s Amended Complaint fails to state a claim upon which relief can be granted.”). Accordingly, Defendant is not obligated to respond to Paragraph 75.

76. On July 9, 2021, the Court dismissed Count I of DCC’s Amended Complaint with prejudice. *See* 7/9/2021 Judgment Entry at p. 31 (“The Court **FINDS** that Count I of Plaintiff’s Amended Complaint fails to state a claim upon which relief can be granted.”). Accordingly, Defendant is not obligated to respond to Paragraph 76.

77. Defendant incorporates each and every answer, denial, and response Paragraphs 1 through 76 as if fully set forth herein.

78. Defendant admits the allegations in Paragraph 78.

79. In response to Paragraph 79, Defendant admits that DL&P generates a portion of the electricity that it sells to its customer and that it purchases and resells electricity to its customers as well. Defendant denies the remaining allegations in Paragraph 79.

80. Paragraph 80 sets forth a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 80.

81. In response to the allegations in Paragraph 81, Defendant admits only that DCC seeks “a declaration that the City violates the Ohio Constitution by purposely purchasing more electricity than it needs for its inhabitants so that it can resell electricity to customers outside its municipal boundaries.” Defendant denies that DCC is entitled to the relief it seeks.

82. In response to the allegations in Paragraph 82, Defendant admits only that DCC seeks a “declaration that the City must cooperate as needed in transitioning DCC’s electric service from DL&P to the appropriate PUCO provider for the territory outside the City in which DCC’s facilities at issue are located.” Defendant denies that DCC is entitled to the relief it seeks.

83. In response to the allegations in Paragraph 83, Defendant admits only that DCC seeks a “declaration that while DCC transitions to the appropriate PUCO provider, it is illegal for the City to transfer electricity at a profit to DCC’s facilities located in Dover Township.” Defendant denies the remaining allegations in Paragraph 83.

84. Defendant incorporates each and every answer, denial, and response to Paragraphs 1 through 83 as if fully set forth herein.

85. Defendant denies the allegations in Paragraph 85.

86. Defendant denies the allegations in Paragraph 86.

87. In response to the allegations set forth in Paragraph 87, Defendant admits that DCC

did not consent to the passage of the Emergency Ordinance. Defendant denies the remaining allegations in Paragraph 87.

88. Defendant denies the allegations in Paragraph 88.

89. In response to Paragraph 89, Defendant admits only that DCC seeks “a declaration that, as there is no contractual agreement between DCC and the City permitting the imposition of a penalty [...] any such penalty is unenforceable and uncollectable as a matter of law.” Defendant denies the remaining allegations in Paragraph 89.

90. Defendant incorporates each and every answer, denial, and response to Paragraphs 1 through 89 as if fully set forth herein.

91. Defendant denies the allegations in Paragraph 91.

92. Defendant denies the allegations in Paragraph 92.

93. Defendant denies the allegations in Paragraph 93.

94. In response to Paragraph 94, Defendant admits only that DCC seeks “a declaration that it has not received or accepted any improper gifts of [sic] goods, services, property, or other things of value from the City.” Defendant denies the remaining allegations in Paragraph 94.

95. Defendant incorporates each and every answer, denial, and response to Paragraphs 1 through 94 as if fully set forth herein.

96. On July 9, 2021, the Court dismissed Count V of DCC’s Amended Complaint with prejudice. *See* 7/9/2021 Judgment Entry at p. 32 (“The Court **FINDS** that Count V of Plaintiff’s Amended Complaint fails to state a claim upon which relief can be granted.”). Accordingly, Defendant is not obligated to respond to Paragraph 96.

97. On July 9, 2021, the Court dismissed Count V of DCC’s Amended Complaint with prejudice. *See* 7/9/2021 Judgment Entry at p. 31 (“The Court **FINDS** that Count V of Plaintiff’s

Amended Complaint fails to state a claim upon which relief can be granted.”). Accordingly, Defendant is not obligated to respond to Paragraph 97.

98. Defendant incorporates each and every answer, denial, and response to Paragraphs 1 through 97 as if fully set forth herein.

99. Defendant states that the Fifth District Court of Appeals dismissed DCC’s defamation claim against O’Meara. Accordingly, Defendant is not obligated to respond to Paragraph 99 as DCC’s defamation claim against the City is barred.

100. Defendant states that the Fifth District Court of Appeals dismissed DCC’s defamation claim against O’Meara. Accordingly, Defendant is not obligated to respond to Paragraph 100 as DCC’s defamation claim against the City is barred.

101. Defendant states that the Fifth District Court of Appeals dismissed DCC’s defamation claim against O’Meara. Accordingly, Defendant is not obligated to respond to Paragraph 101 as DCC’s defamation claim against the City is barred.

102. Defendant states that the Fifth District Court of Appeals dismissed DCC’s defamation claim against O’Meara. Accordingly, Defendant is not obligated to respond to Paragraph 102 as DCC’s defamation claim against the City is barred.

103. Defendant states that the Fifth District Court of Appeals dismissed DCC’s defamation claim against O’Meara. Accordingly, Defendant is not obligated to respond to Paragraph 103 as DCC’s defamation claim against the City is barred.

104. Defendant incorporates each and every answer, denial, and response to Paragraphs 1 through 103 as if fully set forth herein.

105. Defendant denies the allegations in Paragraph 105.

106. Defendant denies the allegations in Paragraph 106.

107. Defendant denies the allegations in Paragraph 107.

108. Defendant denies the allegations in Paragraph 108.

109. Defendant denies the allegations in Paragraph 109.

110. Paragraph 110 sets forth a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 110.

111. Defendant incorporates each and every answer, denial, and response to Paragraphs 1 through 110 as if fully set forth herein.

112. Defendant denies the allegations in Paragraph 112.

113. Defendant denies the allegations in Paragraph 113.

114. Defendant denies the allegations in Paragraph 114.

115. Defendant incorporates each and every answer, denial, and response to Paragraphs 1 through 114 as if fully set forth herein.

116. Defendant denies the allegations in Paragraph 116.

117. Defendant admits the allegations in Paragraph 117.

118. Defendant denies the allegations in Paragraph 118.

119. Defendant denies the allegations in Paragraph 119.

120. Defendant denies the allegations in Paragraph 120.

121. Defendant denies the allegations in Paragraph 121.

122. Defendant incorporates each and every answer, denial, and response to Paragraphs 1 through 121 as if fully set forth herein.

123. On July 9, 2021, the Court dismissed Count X of DCC's Amended Complaint with prejudice. *See* 7/9/2021 Judgment Entry at p. 32 ("The Court **FINDS** that Count X of Plaintiff's Amended Complaint fails to state a claim upon which relief can be granted."). Accordingly,

Defendant is not obligated to respond to Paragraph 123.

124. On July 9, 2021, the Court dismissed Count X of DCC's Amended Complaint with prejudice. *See* 7/9/2021 Judgment Entry at p. 32 ("The Court **FINDS** that Count X of Plaintiff's Amended Complaint fails to state a claim upon which relief can be granted."). Accordingly, Defendant is not obligated to respond to Paragraph 124.

125. On July 9, 2021, the Court dismissed Count X of DCC's Amended Complaint with prejudice. *See* 7/9/2021 Judgment Entry at p. 32 ("The Court **FINDS** that Count X of Plaintiff's Amended Complaint fails to state a claim upon which relief can be granted."). Accordingly, Defendant is not obligated to respond to Paragraph 125.

126. Defendant incorporates each and every answer, denial, and response to Paragraphs 1 through 125 as if fully set forth herein.

127. Defendant admits the allegations in Paragraph 127.

128. Defendant lacks information sufficient to form a belief as to the truth of the allegations in Paragraph 128 and, therefore, denies same.

129. Defendant lacks information sufficient to form a belief as to the truth of the allegations in Paragraph 129 and, therefore, denies same.

130. Defendant denies the allegations in Paragraph 130.

131. Defendant denies the allegations in Paragraph 131.

132. Defendant denies the allegations in Paragraph 132.

133. Defendant denies the allegations in Paragraph 133.

134. Defendant denies the allegations in Paragraph 134.

135. In response to DCC's "WHEREFORE" clause, Defendant denies that DCC is entitled to the relief requested, or to any relief whatsoever, and respectfully request that the Court dismiss DCC's Amended Complaint, in its entirety, with prejudice.

SECOND DEFENSE

136. The Amended Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

THIRD DEFENSE

137. DCC's claims are barred by the doctrines of legislative immunity, executive immunity, and administrative immunity.

FOURTH DEFENSE

138. DCC's claims fail, in whole or in part, because no contract exists between DCC and the City.

FIFTH DEFENSE

139. DCC's claims fail, in whole or in part, because the alleged defamatory statements made by Defendant are privileged.

SIXTH DEFENSE

140. DCC's claims are barred, in whole or in part, by the equitable doctrines of waiver, estoppel, laches, or unclean hands.

SEVENTH DEFENSE

141. DCC's claims are barred, in whole or in part, because the City, at all relevant times, acted in accordance with applicable federal, state, and local laws.

EIGHTH DEFENSE

142. DCC's claims are barred by the doctrine of equitable estoppel.

NINTH DEFENSE

143. DCC's claims are barred, in whole or in part, because of DCC's ratification, agreement, acquiescence, authorization, or consent to the conduct alleged in the Amended Complaint.

TENTH DEFENSE

144. DCC's claims are barred by the applicable statutes of limitations.

ELEVENTH DEFENSE

145. DCC's claims are barred by the doctrines of release, accord, or satisfaction.

TWELFTH DEFENSE

146. DCC's claims are barred due to lack of consideration.

THIRTEENTH DEFENSE

147. DCC's claims are barred by the doctrines of mutual mistake or unilateral mistake.

FOURTEENTH DEFENSE

148. DCC failed to mitigate its alleged damages, if any.

FIFTEENTH DEFENSE

149. DCC's alleged damages, if any, are offset by the damages DCC caused to Defendant.

SIXTEENTH DEFENSE

150. DCC's claims are barred by the doctrines of absolute privilege or qualified privilege.

SEVENTEENTH DEFENSE

151. DCC's claims are barred by the doctrines sovereign immunity.

EIGHTEENTH DEFENSE

152. DCC's claims are barred by DCC's illegal or fraudulent actions.

NINETEENTH DEFENSE

153. DCC's claims are barred by the doctrines of claim preclusion or issue preclusion.

TWENTIETH DEFENSE

154. DCC's claims are barred, in whole or in part, by DCC's contributory negligence.

TWENTY-FIRST DEFENSE

155. DCC's claims are barred because the City of Dover has statutory immunity under R.C. Chapter 2744.

TWENTY-SECOND DEFENSE

156. DCC's claims are limited by the law of the case doctrine.

WHEREFORE, Defendant demands that the claims raised in the Amended Complaint be dismissed with prejudice in their entirety, that judgment be entered in Defendant's favor, and that Defendant recovers its costs and expenses, including reasonable attorney's fees, and such other and further relief to which Defendant may be entitled at law or in equity, or as this Court deems just and appropriate.

CITY OF DOVER, OHIO'S COUNTERCLAIM AGAINST DOVER CHEMICAL CORPORATION

Defendant/Counterclaimant City of Dover, Ohio (the "City"), for its Counterclaim against Plaintiff/Counterclaim Defendant Dover Chemical Corporation ("DCC"), states as follows:

INTRODUCTION

1. Since 1976, DCC—pursuant to its arrangement with the City—has been, and still is, obligated to “furnish, install and own all equipment beyond [the] metering location.”

2. DCC demanded that the City provide—at the City’s expense—electrical equipment, services, and maintenance on DCC’s property, beyond the metering location. DCC also demanded that the City service and maintain equipment beyond the metering location.

3. In 2020, City requested that DCC reimburse the City for the equipment and services that DCC wrongfully took from the City. DCC refused to do so.

PARTIES

4. Plaintiff/Counterclaim-Defendant DCC is an Ohio corporation with its principal place of business located in Tuscarawas County, Ohio.

5. Defendant/Counterclaimant City is a lawfully existing Ohio municipal corporation located in Tuscarawas County, Ohio.

VENUE AND JURISDICTION

6. Venue is proper in this Court pursuant to Ohio Rule of Civil Procedure 3(C)(1).

7. This Court has personal jurisdiction over the parties pursuant to Ohio Rev. Code § 2307.382.

8. This Court has subject matter jurisdiction over this dispute pursuant to Ohio Rev. Code § 2305.01.

FACTS

A. Dover's Electrical Service Regulations and Rate Setting

9. The City provides electrical services to DCC through its community owned, not-for profit electric utility Dover Light & Power ("DL&P").

10. On December 15, 1975, Dover City Council passed Ordinance 111-75 authorizing the Director of Public Service to adopt certain regulations concerning the installation of electrical service and to make a reasonable charge for the same. A copy of the ordinance is attached as

Exhibit 1.

11. Ordinance No. 111-75 provides, in part:

The electric installation regulations are now on file in the Office of the Director of Public Service and shall become effective on January 1, 1976.

12. The electric installation regulations (the "Electric Service Regulations"), referenced in Ordinance No. 111-75 and attached as Exhibit 2, provide, in pertinent part:

When electric service is metered at primary (4160Y or 1247Y) or transmission (69K) voltage, *the customer will furnish, install and own all equipment beyond metering location.*

The City will furnish and install all wiring from the pole to a contact point on the consumer's building, furnish a meter, test device, meter socket, meter transformers and enclosures. *Everything else is furnished by the customer.*

13. Ordinance 111-75 and the Electric Service Regulations provide the basis by which the City provides, and DCC receives, electrical power service since 1975.

14. Pursuant to regulations adopted by the City, the City furnishes and installs all wiring from the pole to a contact on a customer's building, and furnishes a meter, test device, and certain other specified equipment. All other equipment is furnished by the customer.

15. DCC is a primary metered customer.

16. Per the regulations, as a primary metered customer, DCC is required to maintain all equipment and services “beyond the metering location,” under the Electric Service Regulations.

17. The City has set rates and charges for all DL&P customers by ordinance.

B. Dover Chemical Electrical Service

18. On June 1, 1976, Dover City Mayor Guy Smith sent a letter to DCC regarding DCC’s power supply request. In that letter, the Mayor offered multiple ways to provide power to DCC through DL&P.

19. It is unclear whether DCC affirmatively chose how to proceed, but DCC remained a DL&P customer since that point.

20. At no point since DL&P has provided electric service to DCC, was a contract entered into between DCC and DL&P.

21. There is no contract providing the terms for DL&P’s provision of power to DCC, either resulting from Mayor Smith’s letter or in subsequent years.

22. Any such contract to provide electrical services to DCC would have to be approved by City Council and memorialized via an ordinance.

23. Since June 1, 1976, the City has passed the following ordinances related to electric services: 20-78, 21-78, 37-80, 16-81, 13-88, 20-90, 60-92, 28-95, 45-98, 18-03, 46-04, 28-06, 25-07, 28-07, 29-07, 26-08, 27-08, 20-10, 36-11, 35-12, 34-14, and 29-20.

24. The City Council records since 1976 are devoid of any such ordinance ratifying or created a contract between DCC and DL&P for the provision of electrical service. (*See attached Exhibit 3, 9.15.22 Affidavit of J. Leggett*).

25. Since 1975, DL&P has provided power to DCC in accordance with rates established by City ordinance.

26. The rates that DL&P has billed, and that DCC has paid, has been set by ordinance.

27. Prior to the filing of this litigation, DCC has paid its electrical bills from DL&P without protest to the rates set by ordinance.

C. Dover Chemical Corporation and Mayor Richard Homrighausen conspire to provide City-funded equipment, services, and maintenance

28. On information and belief, Mayor Richard Homrighausen, at some point after he was first elected in 1991, against the interests of, and in breach of his duties to, the City, communicated with DCC employees or representatives regarding the provision of electrical equipment and services to DCC.

29. In those communications, Mayor Homrighausen and DCC conspired to provide City-funded electrical equipment, services, and maintenance to DCC without DCC compensating the City for same.

30. From that time forward, Mayor Homrighausen ordered, or approved, requests for City-funded electrical equipment, service, and maintenance to be provided to DCC.

31. The equipment, service, and maintenance were provided to DCC by the City's Electric Field Division.

32. Mayor Richard Homrighausen sent a letter to DCC on February 5, 2003. That letter addressed the provision of power to DCC by DL&P and "address[ed] a number of issues confronting both the City of Dover and Dover Chemical."

33. In that letter, Mayor Homrighausen acknowledged that the City had provided electrical equipment to DCC.

34. The provision of this equipment violated Dover's Electrical Service Regulations.

35. The letter also acknowledged "the continuing practice of the City maintaining or upgrading the lines and equipment inside on DCC's property, past the Primary Metering Pole[.]"

36. The provision of the referenced maintenance and upgrades violated the City's Electrical Service Regulations.

37. The letter also purported to transfer ownership of the City-provided equipment to DCC.

38. The Mayor, acting alone, cannot transfer ownership of City-purchased property.

39. Such a transfer of City-purchased property would have required an approving ordinance by City Council.

40. City Council never passed such an ordinance. The records of City Council from 2003 are devoid of any such ordinance. (*See attached Exhibit 3, 9.15.22 Affidavit of J. Leggett*).

41. On information and belief, DCC was aware that the Mayor's attempt to transfer ownership of the property was unlawful.

42. Following the letter in 2003, DL&P continued to provide equipment, services, and maintenance to DCC behind the meter.

43. DCC did not compensate the City for that equipment, services, and maintenance.

D. The City discovers the unlawful arrangement

44. In 2018 and 2019, DCC entered into negotiations regarding electrical rate revisions.

45. Around September 2019, Director O'Meara, in discussions on another subject, learned that DL&P field service employees were performing maintenance and repair services without seeking payment for those services.

46. Those services included maintaining, servicing, and replacing electrical equipment.

47. DCC did not pay for these services.

48. City records also reflect service calls to DCC that were not invoiced to DCC.

49. The City has provided these records to DCC.

50. Director O'Meara alerted Dover's City Council to the fact that DCC had received equipment, service, and maintenance for its electrical system beyond the metered location.

51. Upon investigation and deliberation, Council determined that DCC had received maintenance, service, equipment, and materials beyond the primary meter without compensating the City.

52. The City took steps to recover some of those costs, including engaging in discussions with DCC and its representatives.

53. In those efforts, the City provided DCC thousands of pages of municipal records documenting the provision of maintenance, service, equipment, and materials beyond the primary metering points without charge.

54. Also as part of those efforts, the City provided a specific accounting of City-purchased equipment, currently located and operating on DCC's property.

55. DCC never compensated the City for the City-purchased equipment.

56. In addition, partial charges were assessed to DCC after September 2019 for recent service calls.

57. After DCC refused to compensate the City for the equipment and services provided, the City proceeded to lawfully pass Ordinance 29-20 to allow for a surcharge to recoup those costs related to DCC's receipt of equipment, service, and maintenance.

58. In light of the constitutional guarantees afforded to municipalities with regard to regulating and charging for utility services which have not been fully paid, the City's assessment of an additional surcharge actions is reasonable, non-arbitrary, non-capricious, and constitutional.

59. DCC has continued to maintain the pending action against the City in an effort to demand more favorable electrical rates for DCC on a going-forward basis.

60. DCC has refused to engage in any resolution discussions of issues in litigation unless the City *first* agreed to propose a more favorable electrical rate to DCC.

61. DCC's external counsel first expressed this position in an email to the City's counsel related to a scheduled mediation intended to resolve the issues in DCC's Amended Complaint.

62. Subsequently, DCC's in house counsel expressed the same position to then Council President Shane Gunnoe.

63. DCC has chosen to maintain claims that are unsupported in fact and law in an effort to intimidate the City in hopes of receiving better electrical rates.

64. This threat of protracted litigation if the City is unwilling to provide a discount on electrical rates is an abuse of the litigation process.

COUNT I – DECLARATORY JUDGMENT

65. The City realleges and incorporates the foregoing Paragraphs as if fully restated herein.

66. A controversy has arisen between DCC and the City as to DL&P and the City's ability to provide electric service to extraterritorial customers and the City's authority to pass Ordinance 29-20. *See* Am. Compl. Counts II and III.

67. The City seeks declaratory relief that it provides electrical service to extraterritorial customers in accordance with constitutional limits and requirements.

68. The City seeks declaratory relief that it lawfully enacted Ordinance 29-20 and was within its authority to do so.

69. Such declaratory relief will conclusively establish the rights and legal relations of the parties and is proper pursuant to Ohio R.C. §§ 2721.03 and 2721.06.

COUNT II – UNJUST ENRICHMENT

70. The City realleges and incorporates the foregoing Paragraphs as if fully restated herein.

71. The City conferred a benefit on DCC by supplying it with electrical equipment and related services at little to no cost to DCC.

72. DCC is and was aware that the City conferred a benefit on it by providing it with electrical equipment and related services at little to no cost to it.

73. DCC retained the benefits conferred upon it by the City without paying the City for the same.

74. In these circumstances, it would be unjust for DCC to retain the benefits provided to it by the City without paying the City for the same.

**COUNT III – IN THE ALTERNATIVE
BREACH OF CONTRACT**

75. The City realleges and incorporates the foregoing Paragraphs as if fully restated herein.

76. The City pleads this count in the alternative pursuant to Ohio Rule of Civil Procedure 8(E)(2).

77. Ordinance 111-75 and the Electric Service Regulations provide the basis by which the City has provided electrical power services since 1975.

78. Since 1976, DL&P has provided power to DCC in accordance with rates established by City ordinance.

79. Per the regulations, as a primary metered customer, DCC is required to maintain all equipment and services “beyond the metering location,” under the Electric Service Regulations.

80. DCC is obligated to pay the rates set by City ordinance for electricity and to maintain and pay for all equipment and services “beyond the metering location.”

81. To the extent the Court determines that an express or implied contract exists between the City and DCC, that agreement requires that DCC purchase, supply, and service all equipment beyond the metering location.

82. By failing to compensate the City for equipment and services provided “beyond the metering location,” DCC has breached any implied or express contract with the City to the extent this Court determines that any such contract exists.

83. DCC’s material breaches have damaged the City in an amount to be proven at trial.

COUNT IV - CONVERSION

84. The City realleges and incorporates the foregoing Paragraphs as if fully restated herein.

85. DCC has wrongfully and unlawfully exerted dominion and control over City-purchased property and equipment by utilizing City-purchased equipment and receiving the benefits of the City’s installation, servicing, and maintenance of that equipment.

86. The City purchased the equipment and property currently located on DCC’s property. DCC is withholding compensation to the City for the equipment.

87. DCC’s failure to compensate the City is an unlawful conversion.

88. DCC’s wrongful exercise of dominion and control over City-purchased equipment and property and the retention of City services in connection with the equipment and property without compensation to the City has damaged the City in an amount to be determined at trial.

COUNT V – CIVIL THEFT
Ohio Rev. Code § 2307.61

89. The City realleges and incorporates the foregoing Paragraphs as if fully restated herein.

90. DCC has wrongfully accepted and used City property, equipment and services without providing the requisite compensation for the property, equipment and services in violation of an existing municipal ordinance.

91. In violating City of Dover Ordinance No. 111-75, DCC has committed a theft offense as defined in Ohio Rev. Code § 2913.01(K)(2).

92. DCC violated Ohio Revised Code § 2307.61 when it willfully took control of the City's property, and other electrical equipment, and accepted City services without paying the cost of the equipment or services.

93. The wrongful taking of the City's equipment and property and receipt by DCC of City services in violation of City Ordinance No. 111-75 and the failure by DCC to pay for the property and services has damaged the City in an amount to be determined at trial.

COUNT VI – CIVIL CONSPIRACY

94. The City realleges and incorporates the foregoing Paragraphs as if fully restated herein.

95. On information and belief, DCC, through its owners, officers, members, agents, representatives, or any other individual acting on behalf of DCC, acted in concert with Mayor Richard Homrighausen in furtherance of DCC's plan to acquire certain equipment and property belonging to the City without paying for the property and equipment.

96. Mayor Homrighausen wrongfully transferred, and DCC wrongfully received, certain City-owned property and equipment.

97. Upon information and belief, DCC and Mayor Homrighausen, acting in concert, acted purposefully and maliciously with the intent to harm the City and its residents through acts of theft and conversion of City equipment and property.

98. As a direct and proximate result of DCC and Mayor Homrighausen's wrongful actions, the City has suffered damages.

COUNT VII – ABUSE OF PROCESS

99. The City realleges and incorporates the foregoing Paragraphs as if fully restated herein.

100. On February 10, 2021, DCC filed the above captioned case.

101. On March 22, 2021, DCC filed a motion for preliminary injunction and an eleven (XI) Count amended complaint for preliminary injunction, declaratory relief, and other relief.

102. On April 7, 2021, this Honorable Court ordered DCC's Motion held in abeyance and ordered that the City continue to provide DCC with electric service at the rate established by Ordinance 29-20 and that DCC pay the City the amount that would have been owed for the electricity prior to the passage of Ordinance 29-20 with the difference owed, based on the passage of Ordinance 29-20, paid into the Court.

103. By filing its Complaint, motion for preliminary judgment, and Amended Complaint, DCC set forth the instant legal proceeding in proper form and with probable cause.

104. Since the filing of its complaint, DCC has perverted this proceeding by telling the City that it intends to continue pursuing this legal proceeding to accomplish the ulterior purpose of negotiating a favorable energy contract with the City.

105. The negotiation of a favorable energy contract with the City by way of DCC's strong-arm tactics is an illegitimate, ulterior purpose for which this proceeding and the legal process was not designed.

106. DCC's conduct has damaged the City.

PRAYER FOR RELIEF

WHEREFORE, for the reasons set forth herein, the City respectfully requests that the Court enter judgment as follows:

- On Count I, that the Court provide a declaration that the City, through DL&P, provides DCC and other extraterritorial customers with electrical service in accordance with the limits and requirements of the Ohio Constitution;
- On Count I, that the Court provide a declaration that the City had the authority to enact, and properly did enact, Ordinance 29-20;
- On Count II, that the Court find that DCC was unjustly enriched and award the City damages in an amount to be determined at trial;
- On Count III, alternatively, that the Court find that DCC breached its express or implied contract with the City and award the City damages in an amount to be determined at trial;
- On Count IV, that the Court find that DCC committed abuse of process and award the City damages in an amount to be determined at trial;
- On Count V, that the Court find that DCC committed civil conspiracy and award the City damages in an amount to be determined at trial;
- On Count VI, that the Court find that DCC committed conversion and award the City damages in an amount to be determined at trial; and

- On Count VII, that the Court find that DCC committed Civil Theft and award the City damages in an amount to be determined at trial; and
- Award the City its costs and expenses, and such other and further relief, including reasonable attorneys' fees, to which the City is entitled in law or equity, as the Court may deem appropriate.

Respectfully submitted,

/s/Dolores Garcia

DOLORES GARCIA (0085644)
ROBIN WILSON (0066604)
HALDEN R. SCHWALLIE (0093665)
ULMER & BERNE LLP
1660 West 2nd Street, Suite 1100
Cleveland, OH 44113-1448
Tel. 216-583-7000
Fax 216-583-7001
dgarcia@ulmer.com
rwilson@ulmer.com
hschwallie@ulmer.com

John T. McLandrich (0021494)
TERENCE L. WILLIAMS (0081363)
MAZANEC, RASKIN & RYDER CO., L.P.A.
100 Franklin's Row
34305 Solon Road
Cleveland, OH 44139
(440) 248-7906
(440) 248-8861 – Fax
jmclandrich@mrrlaw.com
twilliams@mrrlaw.com

Attorneys for Defendant City of Dover, Ohio

CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2022, the foregoing document was served via regular

U.S. Mail upon:

Scott L. Braum (0070733)
Timothy R. Rudd (0075490)
Scott L. Braum & Associates, Ltd.
812 East Franklin Street, Suite C
Dayton, OH 45459
Tel: (937) 396-0089
Fax: (937) 396-1046
slb@braumlaw.com
trr@braumlaw.com

*Counsel for Dover Chemical
Corporation*

/s/Dolores Garcia
*One of the Attorneys for Defendant
City of Dover, Ohio*

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY, OHIO
2022 SEP 15 PM 2:26
JEANNE M. STEPHENSON
CLERK OF COURTS

FILED
COURT OF COMMON PLEAS
FUSCARAWAS COUNTY, OHIO

2022 SEP 15 PM 2:26

JEANNE H. STEPHEN
CLERK OF COURTS

EXHIBIT 1

ORDINANCE NO. 111-75

AN EMERGENCY ORDINANCE AUTHORIZING THE DIRECTOR OF PUBLIC SERVICE TO CHARGE FOR TESTING METERS AND FOR CONNECTING SERVICES AND APPROVING CERTAIN REGULATIONS.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF DOVER, STATE OF OHIO:

I

That there is hereby created:

931.07 CHARGES FOR TESTING METERS. The Director of Public Service is hereby authorized to adopt rules and regulations concerning the testing of meters for electrical service and the same shall not exceed \$15.00 for residents and \$25.00 for commercial and industrial. In the event that the meters are in error of 2 per cent or more, there shall be no charge.

931.08. All persons having their service disconnected for non-payment or similar reasons shall be charged a fee of \$8.00 when performed between the hours of 7:30 A. M. to 4:00 P. M. Monday through Friday and \$14.00 all other times.

931.09. The Director of Public Service is hereby authorized to adopt certain regulations concerning the installation of electrical service and to make a reasonable charge for the same.

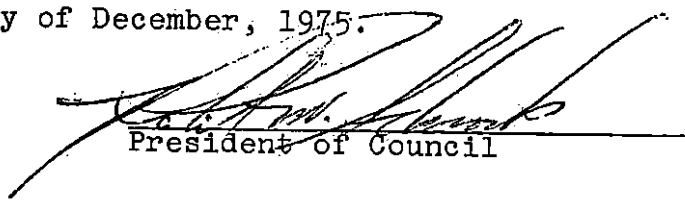
II

The electrical installation regulations are now on file in the Office of the Director of Public Service and the same shall become effective January 1, 1976.

III

That this ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health and safety for the City of Dover and its inhabitants for the purpose of up-dating the rules and regulations of the Electric Department, and provided it receives the affirmative vote of two-thirds (2/3) of the members elected or appointed to council, it shall take effect and be in force immediately upon its passage and approval; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed this 15th day of December, 1975.


President of Council

ATTEST:

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY, OHIO

2022 SEP 15 PM 2: 26

JEANNE M. STEPHEN
CLERK OF COURTS

EXHIBIT 2

Electric Service Regulations

Regulations Governing Development,

Service and charges for Electric

Services by the Electric Field Division,

City of Dover, Ohio

Streets and Public Services Code #931.09 gives the Director of Public Service the authorization to adopt certain regulations concerning the installation of electric service and to make a reasonable charge for the same. (Ord. 1 11-75, Passed 12-15-75, Revised 4-17-89, Revised 11-6-92, Revised 2-1-13, Revised 1-10-2019, Revised 6-29-2021)

Table of Contents

Electric Service Installation Regulations (General)

Underground Services (General)

Rural Services (General)

Multiple Occupancy— Residential and Commercial (General)

Commercial and Industrial (General)

Temporary Service Installation (Charges)

Disconnects and Reconnects for Non-Payment (Charges)

Meter and High Bill Complaints (Charges)

Electric Installation Regulation for Developments

Overhead or Underground Residential Developments

Regulations Governing Underground Electric Services

Underground Installation Specifications

- I. Service to Individual Residential Units not now being Served in Overhead or Underground Allotments
- II. Service to Individual Residential Units now being Served from Useful Overhead Facilities
- III. Services to Mobile Home and Travel Trailer Parks (Single-Phase, 120/240 Volt)
- IV. Service to Commercial Buildings, Industrial Buildings, Schools Multifamily Dwelling Units and Others not covered in Section I, II, III

Applicability of Rate Schedules

Billing

Line Extension

Access to Electric Meters

Underground Service Cost Outline

Installation Detail for Underground

Installation Detail for Overhead Service Entrance

Installation Detail for Overhead Mast Service Entrance

Installation Detail for Underground-Conduit Service Entrance

Electric Service Installation Regulations (General)

Electric Service will be supplies normally to single occupancy residential properties by means of 3-wire, 120/240 volt, single phase, 60 cycle current, and by means of overhead wires from a pole to the nearest suitable point of contact on the house or other building. Contact will be located by Electric Field Division.

The City will furnish and install all wiring from a pole to a suitable contact point on the customers building or yard pole. From the point of contact the Customer will furnish and install cable, conduit or other suitable wiring to and including a weather proof meter or meter enclosure located on the outside of such building at a location agreed upon by the City and the owner or authorized agent. The City will furnish the meter socket.

From the meter or meter enclosure the customer shall furnish and install approved cable, conduit or other wiring to approved entrance switch of not less than 100 ampere capacity. There shall be a provision for a minimum of 4-branch circuits, and not less than 2 circuits wired and connected, and balance upon the 3-wire supply. The entire service installation shall be completed before connection is made.

A ground connection shall be made to a sufficient low resistant grounding rod or rods. The rod or rods must be driven to in a way that conforms to National Electric Code Requirements.

Application for service and services requiring pole line or extensive wiring changes shall be made to the Electric Field Division.

Underground Services (General)

While service is normally supplied by overhead wires at no cost to the customer, if the customer requests and the Electric Field Division approves, a service will be supplied by underground conductors, according to the City's Underground Installation Specifications and Service Cost Outline.

Rural Services (General)

Customers outside the corporation Limits of the City shall be classed as Rural Customers and when making application for electric services shall grant the City a right - a -way if needed.

Rural Customers desiring service and larger capacities or relocation of facilities after connection shall be classified the same as customers within the City.

Multiple Occupancy — Residential and Commercial (General)

Where application for electric service or service changes are made in multiple occupancy, existing service equipment shall be relocated and/or enlarged and modernized where necessary, to enable all service equipment to be served from one meter location and on service wherever possible.

Masts, where needed, shall be furnished by the customer and be of approved electric fittings and conduit with a minimum of two mounting clamps and locking on underside of roof sheeting. All sleeves or fittings must be made below the underside of the roof sheeting.

Commercial and Industrial (General)

Electric service will be supplied, where available, to commercial and industrial customers at either: 120 volt, 208 volt, 240 volt, 277 volt, 480 volt, 2400/4160Y volt, 7200/12470Y volt, or 69000 volts. The City can also supply 3-wire or 4-wire, where the customer load requirements need it and the customer's equipment conforms to the City's regulations.

When electrical service is greater than 1000 Amps at 480 Volts or greater than 1500 Amps at 208 or 240 Volts, the City reserves the right to primary meter the service & require customer to pay 100% of transformer cost or furnish their own transformer. Customer is responsible for installation & future maintenance of transformers, wire, & protection devices.

When electrical service is metered at primary (4160 Y or 12470Y) or transmission (69K) voltage, the customer will furnish, install and own all equipment beyond metering location.

The City will furnish and install all wiring from the pole to a contact point on the customer's building, furnish a meter, test device, meter socket, meter transformers and enclosures. Everything else is furnished by the customer.

Underground services are the same conditions as listed in the Underground Installation Specifications. All underground services will have schedule #40 conduit with appropriate sweeps and weather heads. Conduit size to be determined by the City.

Multiple services at different locations on the same premises will be supplied at the discretion of the city. Where a new location is required, or a larger service, all services must be grouped at the new location. No service entrance shall be smaller than a standard 3-wire, 100 ampere.

No three phase installation will be made for services less than 400 ampere, nor in the territory where three phase is not available, except by special permission and 50% of the entire cost of the City's installation being paid for by the customer.

Large power installations may be metered at the primary or secondary voltage at the option of the City.

The customer shall arrange his equipment to prevent high peaks in demand and violent fluctuations in load. Motors shall be arranged to draw not more than three and one half times full load current at starting periods.

While the City assumes no responsibility for the customers wiring and appliances, it reserves the right to discontinue service to a customer who permits or does not rectify flagrant violations of the National Electric Code or the City's regulations.

The City supplies no wiring beyond the service drop for commercial or industrial accounts.

Primary Line Extensions shall be a shared cost between the City & the customer at the City's discretion.

Temporary Service Installation (Charges)

Temporary electric service (120 volt — 20 ampere) for construction purposes will be made available at the base of the nearest City pole, hand hole or pad mount transformer for a fee of \$60.00 for 90 days.

Where a metered (single or three phase) temporary service is required for construction the contractor will set the service pole. The contractor will furnish and install cable and switches. The City will furnish meter socket and is installed by the contractor. If the electric distribution needs to be extended to supply temporary service the contractor will be charged for time and material.

Where service and meters needs to be the removed or loosened for the installation of siding, the City, upon proper notice, will work with the contractor or customer and will be at no charge.

Disconnects and Reconnects For Non-Payment (Charges)

A customer requesting a connection after being disconnected for non-payment or other irresponsible actions, will be charged a fee of \$50.00 between 7:30 A.M. to 4:00 P.M. (Monday thru Friday - regular hours) and \$100 after regular hours.

Meter and High Bill Complaints (Charges)

When customer complaints about high billing and requests meter to be charged and/or tested:

1. The City will pay for testing meter when meter is not within the requirements of State Law. (plus or minus 2%)
2. The customer will pay for testing of meter when it is within the State Law requirements at a fee of \$40.00.
3. Commercial and industrial accounts will be the same as residential with the exception of testing fee in the amount of \$60.00.

Electric Installation Regulations and Charges for Developments Overhead or Underground
Residential Developments

The developer will furnish the Electric Field Division with an overall plan of the entire area, including future subdivisions. The plan must show property lines and existing easements.

The developer will furnish the Electric Field Division with a plot plan of the subdivision to be developed at this time. This plan must have detailed information concerning pavement widths, sidewalks, grades and locations of proposed water and sewer lines.

The developer must furnish the Electric Field Division with easements for the installation of underground or overhead utilities. The easements should cover all parties concerned, i.e., telephone and C.A. T. V... It is imperative that the easements be acquired before the lots are sold, otherwise each individual property owner will have to grant rights to the utility. A fourteen (14) foot wide strip is adequate for most U.R.D. installations. The easement is usually written to cover one half (1/2) of the easement from each adjacent lot. However, if the trench or pole line is located at the edge of the allotment, than a fourteen (14) or sixteen (16) foot strip will be necessary with the right to extend the facilities in the future to the undeveloped area surrounding the allotment.

The developer must have all grades final (within 6") and lot stakes installed in the area before any facilities are installed. The developer will furnish all trenching including trenching for street lighting within corporation, and back filling according to the Electric Field Division Specifications.

The Electric Field Division will own, furnish and install all primary and secondary conductors, street lighting, transformer pads, transformers, hand holes, poles, hardware and connections.

The developer or customer will be charged an estimated cost difference between primary and secondary overhead and underground distribution systems, minus service laterals.

All underground services will have schedule #40 conduit with appropriate sweeps and weather heads. Conduit size to be determined by the City.

Regulations Governing Underground Electric Services

When a customer of Dover Municipal Light and Power desires underground service to his residential or business establishment, rather than the conventional overhead service, arrangements shall be made by the customer to have this underground service installed by an electrical contractor or qualified electrician. The cost of the underground service and the maintenance there of shall be paid by the customer.

Any residential or establishment desiring to make an underground service should so notify the Electric Field Division of their intent of the location of the service. The Electric Field Division reserves the right to approve the type of cable, conduit and material to be used in the underground installation.

The City will not be required to maintain electric service in cases where repairs are required as these repairs should be made by the owner's electrician. Temporary service will be allowed by the City, without metering, for a reasonable time to allow the customer's electrician to repair or replace the underground service.

Underground Installation Specifications

I. Services To Individual Residential Units Not Now Being Served In Overhead Or Underground Allotments

The customer and/or his contractor shall provide the required trench and conduit and all labor necessary to install the underground service system and being approved by the City, in accordance with the City's Installation Detail for Underground. The City is to stand free of any installation charges the customer may incur. Also, any regulations Governing Underground Electric Service will apply.

II. Service To Individual Residential Units Now being Served From Useful Overhead Facilities

When a customer requests underground service and our overhead facilities are adequate, the customer will pay the total City material cost of installing the new service. If a customer requests underground service and our facilities are not adequate because he has added load, the customer will pay charges covered by 3 (a) of the Underground Service Cost Outline.

III. Service To Mobile Home And Travel Trailer Parks (Single-Phase 120/240 volt)

This section is covered under the UG Service Cost Outline.

IV. Service To Commercial Buildings, Industrial Buildings, Schools, Multi-Family Dwelling Units And Others Not Covered In Sections I, II, and III

The customer and/or his contractor shall supply and install all materials beyond the transformer. The City will furnish the meter socket which will be installed by the contractor. The customer and or his contractor shall provide the required trench and all labor necessary to install the underground service.

4.04 Transformers, Equipment, Vaults

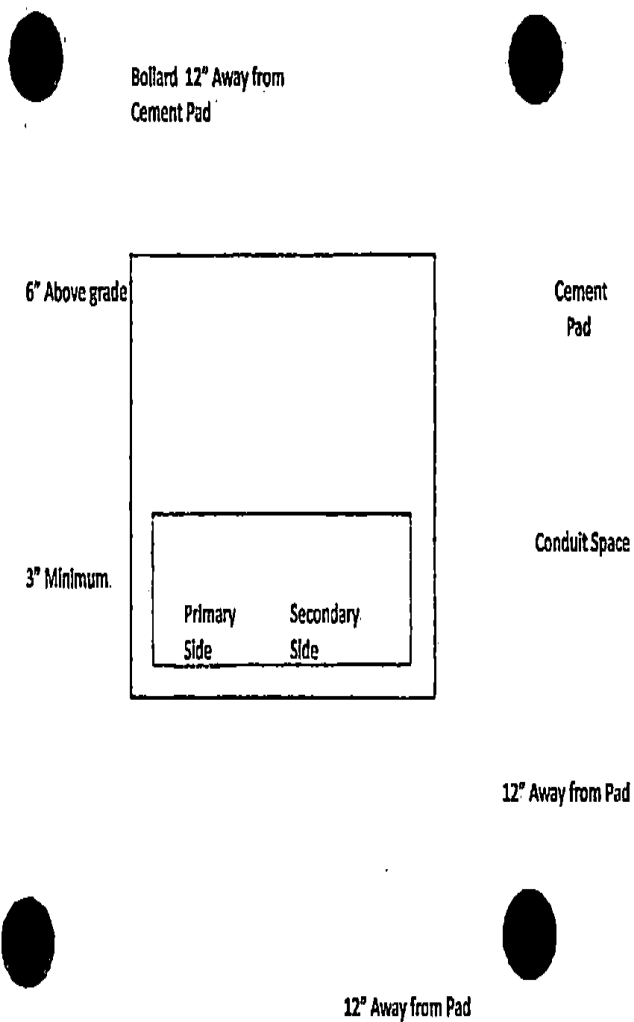
A. General

1. The City of Dover Electric Field Division shall determine the need for, and the location of, all transformers, vaults, and other primary-voltage equipment necessary to furnish underground service.
2. The City of Dover Electric Field Division shall furnish, install and maintain all necessary transformers.
3. Where necessary to protect above-ground equipment, the Customer shall furnish, install and maintain bollards. (See Drawing Bollard-I)
4. In developments, the electric, telephone and cable TV providers have agreed to a location standard for the placement of conduits and vaults/pedestals. The City of Dover Electric Field Division must approve any deviation from this standard.

B. Transformers

1. The Customer shall maintain a clear working space around the transformer free from vegetation, landscaping, structures of any sort, or anything that would restrict access for maintenance or repair. The clear working space shall be a minimum of 3' on all sides, and 10' on the front (the side with the lock).
2. The Customer shall insure that nothing is placed within the clear working space that would impede the free flow of cooling air over the transformer.

Bollard Placement



Notes:

1. Bollards shall be 6" diameter Galvanized Pipe filled with concrete
2. Setting Depth in 3' Minimum with 4" Above ground
3. Location and Number of Bollards could Vary, Consult an Engineer prior to Installation

Applicability of Rate Schedules

Individual Customer Metering: Service will be supplied under the appropriate rate schedule, to each separate dwelling (single or part of a multiple unit), apartment, farm, commercial or industrial establishment as one customer through one meter or one unified set of meters for each class of service.

Billing

Billing Periods: Bills for electric service will be rendered monthly or at the City's option at other regular intervals. Bills rendered monthly shall cover a period of approximately 30 days.

Meter Readings Not To Be Combined: The electricity used by the same person, firm or corporation, but not delivered and metered separately or at different locations, will not be combined for billing purposes.

Uniform Monthly Payment Plan: The City may at its option, make available to residential customers utilizing permanently installed electric house heating equipment, a plan providing for uniform monthly payments for electric service over specified periods.

Line Extensions

Line Extensions: When the estimated revenue is insufficient to justify the investment required to furnish electric service to an applicant or applicants, the City reserves the right to require the applicant or applicants to pay the City all or any portion of the construction cost.

Access To Electric Meters

All customers of the City Electric shall leave access to the electric meter or remote for repair, replacement or reading of meter. The electric meter or remote shall not be closed in, housed or covered. If closed in, housed or covered it shall be changed at the approval of the Superintendent at the customer's expense.

Underground Service Cost Outline

Basic Underground Policy: Residential Subdivision, Mobile Home Parks, Individual Residences, Town Houses, Condominiums and Individual Mobile Park Homes.

1. Primary and secondary distribution systems, minus service laterals.
 - a) Customer charged estimated cost difference between overhead and underground.
2. Service laterals from underground distribution system.
 - a) No charge up to 125 feet in length on 200 amp service rated capacity
3. Service laterals from overhead Distribution System up to 125 feet in length or up to 200 Amp service rated capacity.
 - a) Charge will be estimated by adding the lateral distance * from pole by \$/foot.
4. Service laterals exceeding 125 feet and/or 200 amp service rated capacity.
 - a) Overhead and Underground distribution systems. Customer pays estimated differentials.
5. Replacement of useful overhead service drop with underground.
 - a) Customer to pay the total city material cost of installing the new service.
6. Replacement of Inadequate Overhead Service Drop with underground
 - a) Customer to pay charges covered by 3 a) above. No charge for removal of existing service.

All underground services will have schedule #40 conduit with appropriate sweeps and weather heads. Conduit size to be determined by the City.

*Lateral distance will be from the base of the pole or vault to the base of the meter box.

Cost of Conductors as of January 1, 2016

#2 Alum. Triplex \$0.72 per foot.

#2/7 str Alum. 15KV 175 mil. XLP Full Concentric Neutral with insulated Jacket Cable \$2.20 per foot.

#4/0 URD 600 Volt Cable \$2.78 per foot.



Compare Rates

Residential Rates

Monthly Rate

Customer Charge:

\$6.99

Energy Charges:

First 800 kWh, per kWh

\$0.12711

Next 700 kWh, per kWh

\$0.12129

All remaining kWh, per kWh

\$0.11356

Minimum Charge:

The minimum monthly charge shall be the Customer Charge

General Service Rates (Commercial)

Monthly Rate

Customer Charge:

\$6.62

Energy Charges:

First 50 kWh per kW of demand, per kWh

\$0.16275

Next 150 kWh per kW of demand, per kWh:

First 3000 kWh per kWh

\$0.14161

Over 3000 kWh per kWh

\$0.11912

All remaining kWh per kWh

\$0.10503

Minimum Billing:

The minimum monthly charge shall be the customer charge.

Primary Metering:

When the metering occurs at the primary voltage of the line serving the customer, the kWhr as metered shall be multiplied by 0.95.

Primary Service:

When the customer maintains the necessary equipment, a credit of 0.220 per kW of demand will be applied to the monthly bill.

Determination of Demand:*

The monthly billing demand shall be the greater of:
 The highest recorded demand during the billing month.
 60% of the highest billing demand for the past six months.
 5kW.

*Applicable to all commercial and small industrial customers having demands or contracting for demands less than 50 kW for a six (6) month period or longer.

Industrial Rates****Monthly Charge****Energy Charge:**

First 30 kWhr per kVA of demand, per kWh	\$0.18142
--	-----------

Next 170 kWhr per kVA of demand:

First 2000 kWhr, per kWh	\$0.13668
Next 8000 kWhr, per kWh	\$0.12337
Next 90,000 kWhr, per kWh	\$0.11087
All over 100,000 kWhr, per kWh	\$0.10232

For kWhr in excess of 200 times kVA:

First 200,000 kWhr, per kWh	\$0.09206
All remaining kWhr, per kWh	\$0.08609

Minimum Charge:

The minimum monthly shall be \$2.75 per kVA of demand.

Primary Metering:

When the metering occurs at the primary voltage of the line serving the customer, the kWhr as metered shall be multiplied by 0.95.

Primary Service:

When the customer maintains necessary equipment, a credit as follows shall be applied:

2,300-12,000 delivery voltage	\$0.220 per kVA
23,000 and over	\$0.360 per kVA

Determination of Demand:*

The monthly billing demand shall be the greater of:
 The highest recorded demand during the billing month.
 60% of the highest billing demand for the past six months.
 50 KVA

Power Factor Adjustment:

For any month when the average lagging power factor is less than eighty five percent (85%), the utility shall make an additional charge of one percent (1%) of the total billing amount for each five percent (5%) between the average lagging power factor and eighty-five percent (85%).

** Applicable to all commercial and industrial customers having demands or contracting for demands in excess of 50 kW for a six (6) month period or longer.

Private Outdoor Lighting

175 watt mercury vapor	\$8.83
250 watt mercury vapor	\$11.31
400 watt mercury vapor	\$15.31
100 watt high pressure sodium vapor	\$10.85
250 watt high pressure sodium vapor	\$17.97
250 watt high pressure sodium vapor flood	\$23.34
400 watt metal halide flood	\$23.08

Term:

The minimum term for the private outdoor lighting ("Security Lights") service rate is one (1) year.

** Being eliminated from service, not available for new installation

Penalties

A penalty of five percent (5%) shall be assessed all residential, commercial and industrial customers who fail to pay their electric bills on or before the fifteenth day after said bill is issued by the utility billing office.

Power Cost Adjustment

(Formerly the Fuel Adjustment Clause)

A Power Cost Adjustment (PCA) factor will be included in each bill for service rendered. The adjustment shall be the product of the total kilowatt-hours times the PCA. The PCA will be adjusted as determined by the Utility Office based on increases/decreases in purchased power cost, fuel cost, ash disposal fees, environmental fees and other fuel related costs. The PCA is in units of \$/KWH and is applied to those KWH sales that are subject to the PCA.

The formula used to calculate PCA is as follows:

$$PCA = (PRC - (BASE * KWHSOLD)) / KWHPCA$$

Where

PRC = Power related costs including purchased power, fuel, ash disposal, environmental costs and fuel related costs.

BASE = Base of power related cost included in the existing rates. This value is 0.06893 \$/KWH

KWHSOLD = Retail sales of electricity (KWH), includes all rate classes except it does not include sales to City owned facilities.

KWHPCA = Retail sales of electricity (KWH) subject to PCA Adjustment.

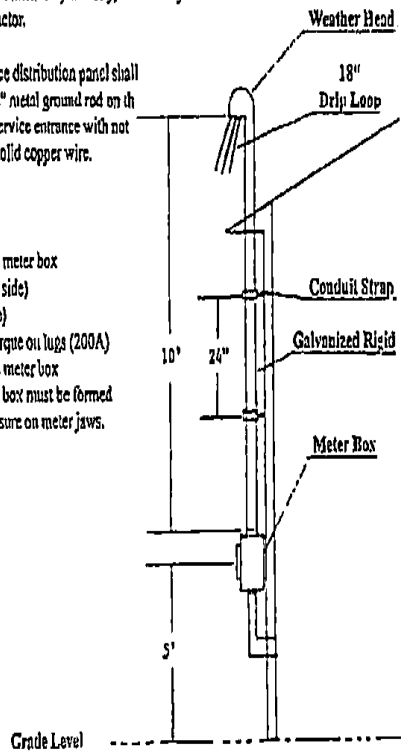
City of Dover - Electric Field Division
Installation Detail For Overhead Mast Service Entrance

Overhead Mast Service Entrance Size				
Service Size Amperes	Meter Box	Conduit Size	Circuit Wire	Neutral Wire
100	100A	1.25"	2 - #2	1 - #2
150	200A	1.50"	2 - #2/0	1 - #2/0
200	200A	2.00"	2 - #4/0	1 - #4/0
320	320A	3.00"	2 - #3/0	1 - #3/0

NOTE: Overhead entrance wire will be 600 volt alum. or copper cable. Meter box furnished by the City, installed by the customer or contractor.

NOTE: The service distribution panel shall be bonded to a 5/8" metal ground rod on the exterior near the service entrance with not less than #4 bare solid copper wire.

METER BOX:
 Four (4) screws in meter box
 Bottom lugs (load side)
 Top lugs (line side)
 150 inch lbs. of torque on lugs (200A)
 No ground wire in meter box
 All wires in meter box must be formed so there is no pressure on meter jaws.



City of Dover - Electric Field Division
Installation Detail For Overhead Service Entrance

Overhead Service Entrance Size				
Service Size Ampere	Meter Box	Conduit Size	Circuit Wire	Neutral Wire
100	100A	1.25"	2 - #2	1 - #2
150	200A	1.50"	2 - #2/0	1 - #2/0
200	200A	2.00"	2 - #4/0	1 - #4/0
320	320A	* 3.00"	2 - #350	1 - #350

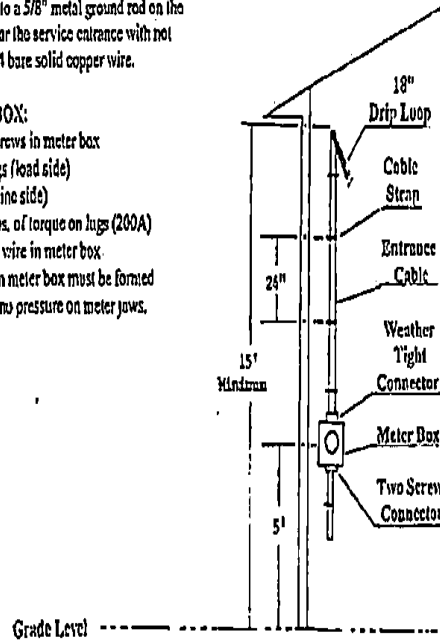
*Weather Head

NOTE: Overhead entrance wire will be 600 volt alum. entrance cable. Meter box furnished by the City, installed by the customer or contractor.

NOTE: The service distribution panel shall be bonded to a 5/8" metal ground rod on the exterior near the service entrance with not less than #4 bare solid copper wire.

METER BOX:

- Four (4) screws in meter box
- Bottom lugs (load side)
- Top lugs (line side)
- 150 inch lbs. of torque on lugs (200A)
- No ground wire in meter box
- All wires in meter box must be formed so there is no pressure on meter jaws.



City of Dover - Electric Field Division
Installation Detail For Underground-Conduit Service Entrance

Underground-Conduit Service Entrance Size				
Service Size Ampere	Meter Box	Conduit Size	Circuit Wire	Neutral Wire
100	100A	2.00"	2 - #2	1 - #4
150	200A	3.00"	2 - #4/0	1 - #2/0
200	200A	3.00"	2 - #4/0	1 - #2/0
320	320A	3.00"	4 - #4/0	2 - #2/0

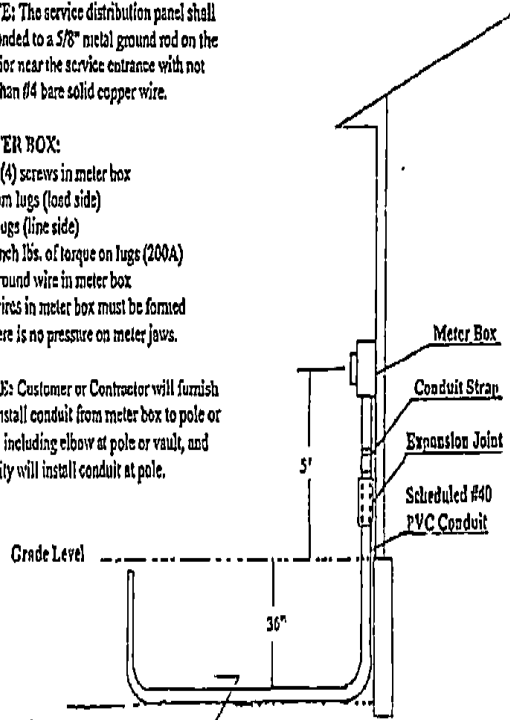
NOTE: Underground wire shall be 600 volt alum. direct burial conductor. Furnished and installed by the City. (ONLY THE FIRST TIME) Customer or Contractor will provide trench and back filling. Meter box furnished by the City, installed by the customer or contractor.

NOTE: The service distribution panel shall be bonded to a 5/8" metal ground rod on the exterior near the service entrance with not less than #4 bare solid copper wire.

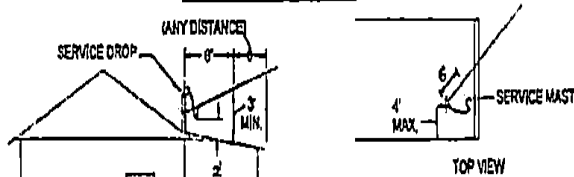
METER BOX:

- Four (4) screws in meter box
- Bottom lugs (load side)
- Top lugs (line side)
- 150 inch lbs. of torque on lugs (200A)
- No ground wire in meter box
- All wires in meter box must be formed so there is no pressure on meter jaws.

NOTE: Customer or Contractor will furnish and install conduit from meter box to pole or vault, including elbow at pole or vault, and the City will install conduit at pole.

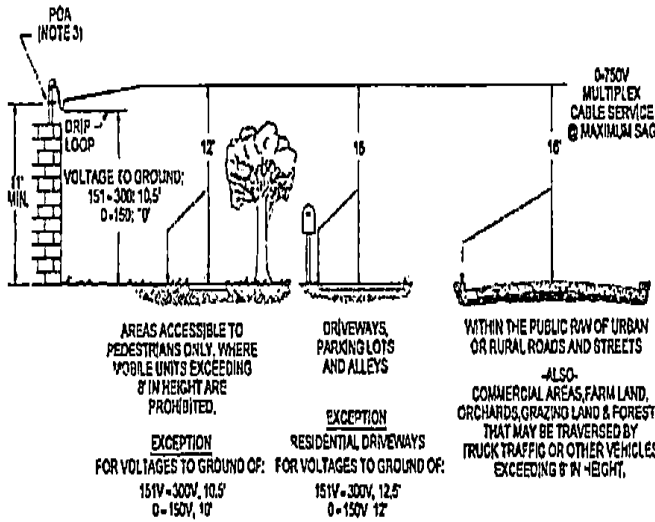


CLEARANCE OF SERVICE DROPS



Applicable for fiber cable and a thru-the-roof mast only. Roof is not readily accessible to pedestrians (no doorway, ramp, stairway or permanently mounted ladder). The mast is located a maximum horizontal distance of 4' from roof edge. The minimum clearance of the cable above the roof within a 6' radius of the mast may be 10'. Beyond the 6' radius, the minimum clearance of the cable above the roof may be 3'.

ROOF NOT READILY ACCESSIBLE



NOTES

1. Clearance from building openings (NESC Art. 234 c): Conductors shall have a minimum horizontal clearance of 5' from windows, doors, porches, fire escapes or similar locations.
2. Clearance from SRP overhead poles and lines: Customer's overhead POA shall not be placed within 10' of any SRP pole and must not be located within 10' of SRP's line.
3. POA shall be 11' minimum above ground but electrical clearances may require the POA to be higher. Contact SRP Design representative to determine actual required POA height.
4. Upper drawing: NESC Rule 234C3; lower drawing: NESC Rule 232.
5. The AHJ may have more stringent requirements for facilities under their jurisdiction.

City of Dover
Department of Public Service
Electric Field Division

Power Service Request
(To be completed when meter socket is issued)

Date: _____ 20__

Type of Meter Socket Issued: _____

Service Address

Billing Address

_____ Customer Name _____
_____ Street Address _____
_____ City, State & Zip _____
_____ Telephone Number _____

Service Information

Residential: _____ Voltage: _____ Size: _____ Type: _____

Commercial: _____ Voltage: _____ Size: _____ Type: _____

Single Phase: _____ Three Phase: _____ CT Metering: _____

Industrial: _____ Voltage: _____ Size: _____ Type: _____

Single Phase: _____ Three Phase: _____ Primary Metering: _____

Contractor or Electrician _____

Street Address : _____

City, State & Zip: _____

Telephone Number: _____

Comments about service:

EXHIBIT 3

FILED
COURT OF COMMON PLEAS
FUSCARAWAS COUNTY, OHIO

2022 SEP 15 PM 2:26

JEANNE M. STULTZ
CLERK OF COURTS

JULIE LEGGETT, being first duly sworn, deposes and testifies that:

1. I am over the age of 18 and am under no disability which would render me incompetent to make this declaration. The statements in this declaration are based on my own personal knowledge. All statements herein are true and correct.

2. I am employed by the City of Dover, Ohio (the "City") as Clerk of the City's Council. I have held this position since 2008.

3. As Clerk of the City's Council, I am responsible for taking minutes at every City Council meeting. I then distribute the minutes to all Council members via email. Once the minutes are approved, they are posted to the City's website. I am also responsible for presenting all of the legislation and ordinances to the City's Council. When legislation or an ordinance is passed, it is printed in the paper, put in the official council ordinance book, and posted on the City's website. I am also responsible for scheduling public hearings.

4. In my role as Clerk of Council, I am familiar with, and the custodian of the City Council's official records.

5. According to Dover City Council records, Dover City Council has passed the following ordinances related to electric services and electric rates: 11-72, 54-74, 55-74, 66-74, 111-75, 20-78, 21-78, 37-80, 16-81, 13-88, 20-90, 60-92, 28-95, 45-98, 18-03, 46-04, 28-06, 25-07, 28-07, 29-07, 26-08, 27-08, 20-10, 36-11, 35-12, 34-14, and 29-20.

6. All ordinances enacted by the City, including the above-listed ordinances, are publically available on the City's website.

7. Through researching all ordinance books and records, I have found no ordinances in the official records of City Council since 1975 approving a contract with Dover Chemical Corporation for the provision of electric services.

8. Through researching all ordinance books and records, I have found no ordinances in the official records of City Council since 2002 approving a transfer of electrical equipment to Dover Chemical Corporation as described in the attached 2003 letter from Mayor Richard Homrighausen. (See attached Exhibit 1).

9. Through researching all ordinance books and records, I have found no ordinance in the official records of City Council allowing the transfer of the equipment listed in the February 5, 2003 letter (Exhibit 1).

10. Through researching all ordinance books and records, I have found no ordinances in the official records of City Council from 1972 to the present authorizing the transfer of electric equipment or services to Dover Chemical Corporation, except as stated in the electric service and rate ordinances listed in clause 5 of this affidavit.

Julie Leggett
JULIE LEGGETT

STATE OF Ohio)
COUNTY OF Tuscarawas) SS:

Sworn to and subscribed before me this 15th day of September, 2022.



EVA NEWSOME
Notary Public, State of Ohio
My Commission Expires
November 24, 2023

Eva Newsome
Notary Public

My Commission Expires: November 24, 2023



City Of Dover

EXHIBIT 1

Office of the Mayor

MUNICIPAL BUILDING, 110 EAST THIRD STREET
DOVER, OHIO 44622

Phone (330) 343-6726

RICHARD P. HOMRIGHAUSEN, Mayor

Fax (330) 343-7336

E-mail: mayorhomrighausen@doverohio.com

February 5, 2003

*Mr. Dwain Colvin, President
Dover Chemical Corporation
3676 Davis Street
Dover, Ohio 44622*

Dear Mr. Colvin:

The City of Dover and Dover Chemical have had a harmonious relationship for many years. The City has provided all electric service to Dover Chemical and worked with Dover Chemical to insure your electric service meets the critical demands of your various processes. Likewise Dover Chemical, although not within the Dover City Limits, has made an immeasurable impact upon the Dover economy since the company's founding. It goes without saying that it is the City's desire to continue this congenial relationship of working together for the mutual benefit of Dover Chemical and the City of Dover.

That being said it is imperative I address a number of issues confronting both the City of Dover and Dover Chemical. The City of Dover has always provided all necessary poles and transformers for all of Dover Chemical's numerous expansion projects. To date the City has installed fifty (50) electric poles, as-well-as twenty-eight (28) transformers of various sizes. It is my understanding that Dover Chemical has assumed fifty percent (50%) of the cost of these implements, as is required by City Ordinance. Additionally, the City has installed twenty-seven (27) security lights on Dover Chemical property along with all necessary hardware and sundry items.



TREE CITY USA

I have enclosed copies of the following documents for your perusal:

- 1.) *Ordinance Number 20-90 - An Ordinance Providing for and Establishing Electric Rates for the Electric Utility of the City of Dover, Ohio (Amended Ordinance Number 60-92) (Updated March 9, 1994/Effective October 1, 1994)*
- 2.) *A copy of the City's existing policy on Primary Metering listed in the City of Dover's Electric Service Regulations, Commercial and Industrial Section.*
- 3.) *A copy of map of Dover Chemical property designating the location, size and number of electric poles, security lights and transformers.*

You will find the following, in item # 2 above, "When Electric Service is metered at primary (4160Y or 12470Y) or Transmission (69KV) voltage, the Customer will furnish, install and own all equipment beyond the Meter Location. Herein lies just one of the problems the City of Dover feels the need to address. The City of Dover has been violating our own rules and regulations, as they apply to the above policy, since the installation of the majority of the items found on the map, described in item # 3.

Secondly, there are numerous maintenance problems our Electric Field Personnel encounter every time we attempt to service on site problems. Dover Chemical has constructed transport pipes around and near to our electric poles making access nearly impossible. This means that we cannot reach the poles with our booms to work on these facilities. Our personnel is not permitted, under OSHA rules and regulations, to work on 12KV energized lines via the pole climbing method.

Thirdly, there are site access problems encountered during outages and/or construction projects. Our personnel have difficulty getting to work areas due to the inappropriate stacking of pallets and the parking of tankers or trailers in the access lanes to the various areas of the plant. These situations cause lengthy waits until these items are removed.

Fourth, there are numerous safety concerns, due to the many hazardous substances on site at Dover Chemical. These materials could be inadvertently released by Dover Chemical or the City of Dover personnel by bumping any of these pipes with our booms, or when digging new pole holes or replacing poles and/or lines. Our personnel have attended training, at Dover Chemical by your personnel, on Hazards at Dover Chemical. They have always been told to have a Dover personnel with them on site, however, upon arriving on site either these personnel are unavailable and/or disappear soon after arrival.



Recently Dover Chemical's consulting engineers have been in contact with City of Dover Electric personnel to discuss three (3) additional projects scheduled for construction this calendar year, 2003. The addition of these facilities will only further exacerbate these conditions.

Considering all the above, it is the City's opinion that continuing the practice of the City of Dover maintaining and upgrading the lines and equipment inside the main Plant of Dover Chemical, past the Primary Metering Pole, is not in accordance with the Electric Service Regulations of the City of Dover, nor is it in the best interests for safety concerns for Dover City Personnel.

Furthermore Dover Chemical is the only facility, within or without the City of Dover, where this situation exists. This practice is not fair to the City's other Commercial or Industrial Accounts, nor is it in accordance or compliance with Dover Codified Ordinances.

Therefore, as of May 1, 2003, the City of Dover will turn over ownership of all electric facilities and equipment (poles, transformers, security lights, hardware and all associated sundry items) from the Primary Metering Point on Davis Street, to the Dover Chemical Corporation. These electric facilities are in excellent condition and should serve Dover Chemical for many years into the future.

There are a number of cost savings benefits regarding this transaction, which we will discuss during our meeting the afternoon of February 5, 2003.

The City of Dover regrets if this decision causes any undue hardship upon the Dover Chemical Corporation, however we feel it is the right and proper thing to do for all parties concerned.

Best personal regards,


Richard P. Homrighausen
Mayor

RPH/dim

Enclosures

