

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

In the Matter of the Request for a Declaratory Ruling regarding the Electric Service Territory Boundary between NorthWestern Energy and Codington-Clark Electric Cooperative, Inc.	<p>EL12-_____</p> <p>Petition for Declaratory Ruling</p>
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The City of Watertown has offered to purchase NorthWestern Energy’s electric utility property and service rights in a recently annexed area under SDCL § 49-34A-49. In accordance with SDCL § 1-26-15 and ARSD 20:10:01:34, NorthWestern Energy petitions the Commission to determine the exact service territory boundary in the annexed area. This decision may affect whether the City of Watertown must satisfy its obligations under SDCL § 49-34A-50 to NorthWestern Energy or to Codington-Clark Electric Cooperative, Inc.

The Commission’s decision is important for additional reasons beyond this docket. Future annexation in this area is probable. A clear determination of the service territory boundary will guide the City, the Co-op, and NorthWestern Energy as additional annexation occurs. In addition, the method for translating territory lines drawn on a map into legal descriptions or physical representations in the field will impact other cities, utilities, and cooperatives whenever there are territorial questions. Finally, a decision in this docket will assist the Commission’s efforts to verify electric territory mapping data for conversion to electronic format and use in a Geographic Information System database.

In support of its petition, NorthWestern Energy submits the following information required by ARSD 20:10:01:34.

1. State statutes or Commission rule or order in question

The following statutes¹ guide this matter:

- A. SDCL § 49-34A-42: Electric utility's exclusive rights in assigned service area – Connecting facilities in another area.
- B. SDCL § 49-34A-44: Maps of service areas to be filed by electric utilities – Boundaries assigned by commission order – Adjustment of intertwined service areas – Protest of assigned service areas.

2. Facts and circumstances which give rise to the issue to be answered by the Commission

On February 22, the City of Watertown advised NorthWestern Energy of the annexation of real property within NorthWestern Energy's service territory and offered to purchase any electric utility properties and service rights within the annexed area. (Ex. A.) After receiving the City's proposal, NorthWestern Energy reviewed its electric service territory boundaries to determine the impact of the annexation. NorthWestern Energy's electric service territory in this area is bordered by Codington-Clark Electric Cooperative on the south and east and by Watertown Municipal Utilities on the north and west. In speaking with the City and the Co-op and after examining various maps, NorthWestern Energy discovered a variance in its assessment of the boundary between NorthWestern Energy's service territory and the Co-op's service territory in the annexed area and the boundary definition communicated from Commission Staff to the City. NorthWestern Energy believes its method of defining the boundary is accurate and consistent with historical practice and survey methods.

The legal description of the annexed property is:

The East 256 feet of the West 1734 Feet of the North 1576.34 feet
Less Lot H-4 and the East 494 Feet of Boerger First Addition, Less
the South 190 Feet, of the NE ¼ of Section 3, Township 116

¹ Copies of the applicable statutes are attached to this Petition.

North, Range 52 West of the 5th P.M., Codington County, South Dakota.

Diagrams of this area are on pages 5 and 8 of the City's offer. (Ex. A.)

The following exhibits will help the Commission visualize this area:

- Exhibit B: Township plat² of Township 116 North (T116N), Range 52 West (R52W) of the 5th Principal Meridian (P.M.). This is the original survey of T116N, R52W, 5th P.M. and was approved by the Surveyor General on February 5, 1873. Page two shows an enlargement of Section 3.
- Exhibit C: Electric territory map of Codington County.³ Page two has an enlargement of the area at issue, with a red box drawn around Section 3. NorthWestern Energy's service territory is shaded blue, the City's service territory contains green hash marks, and the Co-op's service territory is not shaded.
- Exhibit D: NorthWestern Energy's service territory map of the area in question. NorthWestern Energy's service territory is shaded red, the City's service territory is shaded blue, and the Co-op's service territory is not shaded.

3. NorthWestern Energy's determination of its electric service territory boundary is correct⁴

A township is a major subdivision of land under the rectangular system of surveys. Most townships are four-sided and measure approximately six miles on each side. Each township is subdivided into 36 sections, with Section 1 being in the northeast corner of the township. (See Ex. B.) A standard section contains 640 acres. A standard section can be further divided into halves (320 acres), quarters (160 acres), sixteenths (40 acres), etc.⁵

At the time South Dakota was surveyed, the Gunter's chain was the standard device for measuring distances. The chain consisted of 100 links, and its total length was 66 feet.⁶ Thus,

² Available at <http://www.glorerecords.blm.gov>.

³ Available at <http://puc.sd.gov/energy/electricmaps/default.aspx>.

⁴ As surveying terminology and techniques are not generally known, NorthWestern Energy presents some relevant, basic surveying background, supported by Mr. Gogolin's affidavit and established authorities, to help ensure that the Commission and the parties fully understand the basis of NorthWestern Energy's determination.

⁵ Bureau of Land Management General Land Office Reference Center, Rectangular Survey System, <http://glorerecords.blm.gov/reference> (last visited May 25, 2012).

⁶ INSTRUCTIONS TO THE SURVEYORS GENERAL OF PUBLIC LANDS at 8-9 (Wash. Gov't Printing Office 1871), available at <http://www.glorerecords.blm.gov/reference>.

80 chains equals one mile. Conditions at the time of measurement—e.g., summer versus winter, age of the chain, topography of the land being surveyed—affected the accuracy of the measurements. Therefore, a township is rarely *exactly* six miles by six miles. When the townships were divided into sections, the surveyors worked from east to west and from south to north. Any error in surveying the township was placed in the north tier (Sections 1-6) and west tier (Sections 6, 7, 18, 19, 30, 31) of sections.⁷ (See, e.g., Ex. B.)

Exhibit B illustrates how T116N, R52W, 5th P.M. was surveyed and divided into sections. The standard sections (i.e., 8-12, 17-13, 20-24, 29-25, and 32-36) were subdivided into quarters. Sections 1-7, 18, 19, 30, and 31 contain a combination of standard subdivisions and government lots. A government lot varies from the standard subdivision and can have an irregular shape (such as when adjacent to a river). Government lots are designated by a number. The government lot numbers are written in red on Exhibit B. Section 3 of T116N, R52W, 5th P.M., which contains the annexed area at issue in this docket, is subdivided into two 160-acre tracts, two 80-acre tracts, and four government lots. (See page 2 of Ex. B.)

NorthWestern Energy asserts that the legal description of its service territory in the area at issue is:

Government Lot 1 and Government Lot 2 of Section 3, Township
116 North, Range 52 West of the 5th Principal Meridian, Codington
County, South Dakota.⁸

Ron Gogolin, Specialist - Right-of-Way/Land Acquisition, has spent 32 years dealing with electric service territory issues.⁹ In his experience, electric service territory boundaries coincide with

⁷ INSTRUCTIONS TO THE SURVEYORS GENERAL OF PUBLIC LANDS at 7 (Wash. Gov't Printing Office 1871) (“The section lines are surveyed from *south* to north on true meridians, and from *east* to west, in order to throw the excesses or deficiencies in measurements on the north and west sides of the township, as required by law.”).

⁸ Compare Ex. B with Ex. C or Ex. D.

⁹ (Gogolin Aff. ¶¶ 1-2.)

a land line unless there are special conditions.¹⁰ A land line is an accepted boundary of a part of a section—i.e., a line that divides a section into halves, quarters, sixteenths, etc.¹¹ Land lines are drawn in red on Exhibit 3. When an electric service territory boundary deviates from a land line, that deviation is filed with the Commission.¹²

Two examples of deviations on file are attached to the Affidavit of Ron Gogolin. The legal description in Exhibit 1 combines portions of six sections into one area. The area is described using several standard subdivisions (e.g., “SE¼, Section 27, T97N, R58W”) with one irregular part (“Area South of the James River . . .”).¹³ Exhibit 2 describes service territory in the Parkston area using a metes-and-bounds description.¹⁴ A metes-and-bounds description describes a parcel of land using distance (metes) and direction (bounds). The description starts at a permanent reference mark and travels clockwise along the parcel’s perimeter.

There is no deviation on file with the Commission for NorthWestern Energy’s electric service territory in the area annexed by the City.¹⁵ Therefore, based on its experience with defining service territory boundaries by land lines unless there is a recorded deviation, NorthWestern Energy believes that its electric service territory in the annexed area should be defined with land lines. Specifically, NorthWestern Energy asserts that the boundary between its service territory and the Co-op’s service territory is the east-west land line that separates Government Lots 1 and 2 from the South ½ of the Northeast ¼ of Section 3, T116N, R52W, 5th P.M.¹⁶

Since receiving the City’s notice of annexation and offer to purchase, NorthWestern Energy has reached out to Commission Staff, has met with Codington-Clark Electric Cooperative,

¹⁰ (Gogolin Aff. ¶ 3.)

¹¹ (Gogolin Aff. ¶ 4.)

¹² (Gogolin Aff. ¶ 5.)

¹³ (Gogolin Aff. ¶ 6 & Ex. 1.)

¹⁴ (Gogolin Aff. ¶ 7 & Ex. 2.)

¹⁵ (Gogolin Aff. ¶ 8.)

¹⁶ (Gogolin Aff. ¶ 9.)

and has spoken with the City of Watertown. At this time, NorthWestern Energy believes that neither Staff nor the Co-op opposes NorthWestern Energy's interpretation of its electric service territory in the annexed area. NorthWestern Energy requests a declaratory ruling from the Commission because both NorthWestern Energy and Codington-Clark Electric Cooperative would like an official determination of the exact electric service territory boundaries in the area.

3. Declaratory ruling requested


NorthWestern Energy respectfully requests that the Commission define its electric service territory in Section 3, T116N, R52W, 5th P.M., as:

Government Lot 1 and Government Lot 2 of Section 3, Township
116 North, Range 52 West of the 5th Principal Meridian,
Codington County, South Dakota.

Dated at Sioux Falls, South Dakota, this 25th day of May, 2012.

Respectfully submitted,

NorthWestern Corporation d/b/a
NorthWestern Energy



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49-34A-42. Electric utility's exclusive rights in assigned service area--Connecting facilities in another area. Each electric utility has the exclusive right to provide electric service at retail at each and every location where it is serving a customer as of March 21, 1975, and to each and every present and future customer in its assigned service area. No electric utility shall render or extend electric service at retail within the assigned service area of another electric utility unless such other electric utility consents thereto in writing and the agreement is approved by the commission consistent with § 49-34A-55. However, any electric utility may extend its facilities through the assigned service area of another electric utility if the extension is necessary to facilitate the electric utility connecting its facilities or customers within its own assigned service area.

The commission shall have the jurisdiction to enforce the assigned service areas established by §§ 49-34A-42 to 49-34A-44, inclusive, and 49-34A-48 to 49-34A-59, inclusive.

Source: SL 1965, ch 254, §§ 5, 8, 10; SDCL, §§ 49-41-4, 49-41-7, 49-41-9; SL 1970, ch 261, §§ 5, 8, 10; SL 1975, ch 283, § 38; SL 1991, ch 386, § 4.

49-34A-44. Maps of service areas to be filed by electric utilities--Boundaries assigned by commission order--Adjustment of intertwined service areas--Protest of assigned service areas. On or before January 1, 1976, or, when requested in writing by an electric utility and for good cause shown, and at a further time as the Public Utilities Commission may fix by order, each electric utility shall file with the commission a map or maps showing all its electric lines outside of incorporated municipalities as they existed on March 21, 1975. Each electric utility shall also submit in writing a list of all municipalities in which it provided electric service on March 21, 1975. Where two or more electric utilities serve a single municipality, the commission may require each utility to file with the commission a map showing its electric lines within the municipality.

On or before July 1, 1976, the commission shall, after notice and hearing, establish the assigned service area or areas of each electric utility and shall prepare or cause to be prepared a map or maps to accurately and clearly show the boundaries of the assigned service area of each electric utility.

In those areas where, on March 21, 1975, the existing electric lines of two or more electric utilities were so intertwined that § 49-34A-43 cannot reasonably be applied, the commission shall, after hearing, determine the boundaries of the assigned service areas for the electric utilities involved. In making its decision, the commission shall be guided by the following conditions as they existed on March 21, 1975:

- (1) The proximity of existing distribution lines to such assigned territory, including the length of time such lines have been in existence;
- (2) The adequacy and dependability of existing distribution lines to provide dependable, high quality retail electric service;
- (3) The elimination and prevention of duplication of distribution lines and facilities supplying such territory;
- (4) The willingness and good faith intent of the electric utility to provide adequate and dependable electric service in the area to be assigned;
- (5) That a reasonable opportunity for future growth within the contested area is afforded each electric utility.

Any electric utility which feels itself aggrieved by reason of an assignment of a service area may protest such assignment within a ninety-day period after issuance of the map of the assigned service areas by the commission and the commission shall have the power, after hearing, to revise or vacate such assigned service area or portions thereof consistent with the provisions of this section and § 49-34A-43.

Source: SL 1965, ch 254, § 14; SDCL, § 49-41-12; SL 1970, ch 261, § 14; SL 1975, ch 283, §§ 32, 33, 37.