

**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.**

Docket No. EL12-040

**Commission Staff's Response and
Recommendation on NorthWestern
Energy's Petition for Declaratory Ruling**

I. STATEMENT OF THE CASE

On May 25, 2012, NorthWestern Corporation d/b/a NorthWestern Energy (NWE) filed a Petition for Declaratory Ruling with the Commission. NWE requests a determination of the precise location of a territory boundary shared by NWE and Codington-Clark Electric Cooperative, Inc. (Codington) in the northeast quarter of a fractional section identified as Section 3, Township 116 North, Range 52 West, Codington County, South Dakota (Section 3). On February 6, 2012, the City of Watertown (Watertown) approved a resolution to annex real property in Section 3. In addition, Watertown has elected to pursue its option under SDCL §49-34A-49 to purchase all electric utility properties and service rights in this area.

Currently, there are no existing facilities in the annexed area. Therefore, under SDCL §49-34A-50, Watertown must compensate the existing utility for the value of service rights at "an annual amount equal to the sum of twenty-five percent of the gross revenues received from power sales to consumers of electric power within the annexed area." Also, this duty to "compensate the utility for service rights shall continue for eleven years from the date of the offer to purchase by the annexing municipality. During the eleven-year period, compensation for service rights to any one customer location within the annexed area shall be paid by the annexing municipality for a period of seven years or until the expiration of the eleven-year period, whichever is less." *Id.*

A. NWE ARGUES THE TERRITORY DIVISION IS LOCATED ON THE ¼ SECTION LINE OF SECTION 3 AND THE ANNEXED AREA FALLS IN THIS TERRITORY

In its petition, NWE argues the annexed area falls inside its designated territory. NWE provides a legal description consistent with its interpretation of its service territory in the NE ¼ of Section 3, 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.

In other words, NWE argues the landline representing the southern borders of Government Lot 1 and Government 2 represent the territory division shared by NWE and Codington at this location. In support of its position, NWE points to the fact that electric service territory boundaries generally follow landlines established under the Public Land Survey System. In addition, NWE argues the Commission must approve territory lines deviating from established landlines and no deviation has been approved for this location. As such, the territory division depicted on the Commission's Official Electric Territory map (Official Map)(See, NWE Ex. C) represents the ¼ section landline, which is the southern borders of Government Lots 1 and 2.

B. CODINGTON AND WATERTOWN ARGUE THE TERRITORY DIVISION IS LOCATED NORTH OF THE ¼ SECTION LINE OF SECTION 3

Codington asserts the territory division falls somewhere north of the ¼ section line in the NE ¼ of Section 3. Codington states, since 1977 it has served a customer location within the territory claimed by NWE and a ruling in favor of NWE would effectively redraw the service territory division causing its current customer to fall outside its service territory. On July 3, 2012, Watertown filed its letter to the Commission providing its interpretation of the territory boundary. Specifically, it believes the Commission's mapping information shows a territory boundary located on the 1/8 section line of Section 3, not the ¼ section line as argued by NWE. Due to the corrected

measurements of Section 3, this would place the territory division approximately 528 feet north of the southern borders of Government Lots 1 and 2.

II. ARGUMENT

As the Commission is well aware, the Public Utilities Commission Staff (Staff) is currently in the process of converting all electric territory mapping data to electronic format for input into a Geographic Information System (GIS) database. This process involves collecting all official mapping information and working with electric utilities across the state to verify the accuracy of this information as the current status of all electric service territory boundaries. Predominantly, the information is gathered by referencing the official territory maps maintained on the Commission's website. These official maps reflect territory boundaries established by the Commission according to SDCL §49-34A-44 and all Commission approved territory changes since July 1, 1976.

Through the experience gained in the GIS mapping project, Staff agrees that service territory boundaries most often follow established landlines. It is far less common for a territory boundary to follow a different path; however, it is not so uncommon for Staff to discount that possibility here. Staff has experienced a large number of territory divisions that deviate from established landlines and have no record of Commission approval for the deviation. In addition, throughout the GIS project Staff has experienced a large number of what it calls 'unapproved exceptions,' in which a customer is being served by one electric utility in another's territory without Commission approval. As such, the fact that Codington currently serves a customer in the territory claimed by NWE is indicative of territory designation but not dispositive evidence. It is not uncommon that electric utilities and their customers are completely unaware a current customer represents an unapproved exception. A great deal of time has been spent in the GIS project to determine if a territory deviation has occurred and if the deviation is an unapproved exception.

**A. THE COMMISSION SHOULD RELY ON THE TERRITORY MAP AGREEMENTS
SIGNED BY THE PARTIES TO DETERMINE THIS ISSUE**

Staff believes two mapping agreements signed by the parties during the original 1975-1976 territory designation process are most relevant to the Commission's determination, Exhibit A (NWE Map¹) and Exhibit C (Codington Map²). As the PUC has no record of any changes in the subject location, the territory remains as indicated on these maps. Staff has included these maps for two reasons. First, the pen mark on the Official Map showing the territory division in the NE ¼ of Section 3 is comparatively large, distorting the accuracy of the measurement. Second, Staff's review of Exhibits A and C shows the territory division in the NE ¼ of Section 3 is slightly different on each map.

The NWE Map shows a territory boundary located slightly farther north than the Codington Map³. As stated by Watertown in its letter to the Commission, the discrepancy in mapping information is even more pronounced if one compares the territory divisions directly east in Sections 3 – 6, of Township 116 North, Range 51 West (Sections 3-6). In Sections 3-6, it appears the NWE Map shows a territory division located on the ¼ section line. As the territory divisions in Sections 3-6 are drawn slightly lower on the map than the territory line in Section 3, this suggests the territory division in Section 3 is located farther north than the north ¼ section line. Conversely, the Codington Map shows a territory division clearly located on the ½ section line in Sections 3-6. This would suggest the territory division in Section 3 likely falls on the ¼ section line, conforming to NWE's interpretation. Since the parties signed both maps on the same day, it is clear this discrepancy was overlooked at the time the territory division was established.

¹ Exhibit A has been referred to as NWE Map as NWE was a signatory to each agreement attached to the map.

² Exhibit C has been referred to as Codington Map as Codington was a signatory to each agreement attached to the map.

³ In order to avoid confusion, Staff feels it is necessary to note its designations of the NWE Map and Codington Map according to the criteria noted in Footnotes 1 & 2 above, should not be interpreted to suggest the map bearing the NWE or Codington designation is most favorable to that party's position. In fact, the opposite is true, NWE and Codington assert a position Staff believes is supported by the other party's map. However, it is clear during the mapping project the Commission drafted a mapping agreement for each individual utility throughout the state. Although the same parties often signed multiple agreements based on the same territory, one map was clearly created for NWE and one for Codington.

B. ALL MEASUREMENTS PERFORMED ON THE MAPPING INFORMATION AVAILABLE TO THE COMMISSION SUGGEST THE TERRITORY DIVISION IS LOCATED ON THE ¼ SECTION LINE IN THE NE ¼ OF SECTION 3

Despite the disagreement in mapping information, Staff performed extensive measurements of Section 3 and Sections 3-6, including; hand measurements of all available hardcopy maps, hand measurements of expanded versions of these maps, and digital measurements utilizing the Commission's ArcMap software and other online geographic information programs. Although these measurements resulted in varied outcomes due to map formats and measurement methods, Staff finds the results consistent within a range and indicates the proper location of the territory division. All measurement show the NWE service territory is located at a distance within 918 feet – 1492 feet south of the northern boundary line in the NE ¼ of Section 3. According to the Bureau of Land Management map (*See*, NWE Ex. B); the true measure from the northeast corner of Government Lot 1 to the southeast corner of Government Lot 1 is 1,027 feet. Staff believes the range of measurements it obtained support a finding that the territory division in the NE ¼ of Section 3 was meant to correspond to the ¼ section line, or the southern boundaries of Government Lots 1 and 2. Exhibit E is a map developed by Staff showing its interpretation of the territory divisions of Section 3.

Exhibit E places the customer location served by Codington directly on the territory division. As such, Staff does not agree a ruling consistent with NWE's interpretation will place this customer outside Codington's service territory. Throughout the GIS project, Staff has found many instances when a territory division will cut through customer locations. This is most often seen in new developments constructed in more densely populated areas. Furthermore, even if the Commission's ruling would result in Codington's customer location falling in NWE territory, Staff would maintain its current recommendation. Simply stated, Staff believes there are no measurements it performed to indicate the territory division is equal to a distance of 528 feet, or the 1/8 section line. In addition, under the circumstances, there appear to be no reasons for this territory division to follow a path other than an established landline in Section 3. Because Staff obtained no evidence showing the territory was intended to fall on the 1/8 section line, it appears the ¼ section line is the only viable option.

III. CONCLUSION

Staff believes an error occurred during the original 1975-1976 process of establishing the NWE and Codington electric service territory boundary. Nonetheless, Staff finds all physical and digital measurements performed on the division in the NE $\frac{1}{4}$ of Section 3 indicate the boundary falls on the $\frac{1}{4}$ section line. This conclusion is based on the range of measurements obtained by Staff in its review and Staff's belief the territory division was meant to follow one of the established landlines in Section 3. Therefore, Staff recommends the Commission rule the territory division in the NE $\frac{1}{4}$ of Section 3 is located on the $\frac{1}{4}$ section line as suggested by NWE. In addition, as Staff believes this ruling will cause the territory division to split Codington's customer location, Staff recommends the Commission rule Codington is the appropriate service provider for this location.

Dated this 13th day of June, 2012.

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