

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 Charles Mix Electric Association, Inc. and NorthWestern Corporation d/b/a Northwestern Energy	EL13- _____ Petition for Declaratory Ruling
---	--

A dispute has arisen between Charles Mix Electric Association, Inc. (“CME” herein) and NorthWestern Energy concerning the exact location of the service territory boundary in a newly annexed portion of the City of Platte, South Dakota. Residential development is currently occurring in "Sunset Acres" located within the disputed area herein described as: the Southwest Quarter of the Northeast Quarter of Section 23, Township 99 North, Range 68 West of the 5th P.M., in Charles Mix County, South Dakota. CME hereby petitions the Commission to determine such service territory boundary in order that CME and NorthWestern Energy can proceed to provide electric service in accordance therewith. The 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, CME submits the following information required by ARSD 20:10:01:34.

1. State statutes or Commission rule or order in question.

The following statutes 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 July 1, 1975 the Public Utilities Commission of the State of South Dakota ("PUC" herein) provided notice to all electric public utilities that they were to submit a map and agreement to the PUC by January 1, 1976, delineating the proposed service area boundaries.

On December 22, 1975, CME and Northwestern Public Service Company (predecessor to Northwestern Energy) reached an agreement and filed same with the PUC. By Decision and Order duly entered on July 1, 1976, the PUC approved and adopted the territorial boundaries and "established" the assigned service areas of the respective parties in accordance with the "Official Electrical Territorial Map" filed with the PUC. (See Petitioner's Exhibit No. 1.) However, the "official" map as originally filed with the PUC is indistinct as to the area in controversy.

The heart of the dispute involves the location of the north-south territorial boundary in southwest Platte, South Dakota, encompassing the residential development known as "Sunset Acres". (See Petitioner's Exhibits Nos. 2 and 3.) CME claims that the entire Southwest Quarter of the Northeast Quarter of Section 23, T99N, R68W lies in CME's service territory, including "Sunset Acres". (See Petitioner's Exhibit No. 4A.) Northwestern Energy contends that the boundary line is 660 feet to the west and therefore divides the Southwest Quarter of the Northeast Quarter in half so that the west half belongs to CME and the east half is Northwestern Energy's service territory. (See Petitioner's Exhibit No. 4B.) If CME is correct, "Sunset Acres" is wholly located within CME's service territory. If Northwestern Energy is correct, all but approximately the west 50 to 55 feet of the subdivision lies in Northwestern Energy's territory.

CME's claim is based upon the fact that generally throughout Charles Mix County the two utilities have used not less than quarter section lines for boundaries where the boundaries are not coincident with municipal boundaries. Repeatedly, the boundary line is situated on quarter section lines, half section lines, or section lines. More pointedly, every territorial boundary line on the exterior of Platte, SD is either coincident with the municipal boundary or located on a quarter or half section line. (See Petitioner's Exhibit No. 5 showing the boundary line in Sections 11, 12, 13, 14, 23 and 24 in Township 99 North, Range 68 West of the 5th P.M. and Sections 18 and 19 in Township 99 North, Range 67 West of the 5th P.M.) If, as Northwestern Energy asserts, the boundary runs north and south from a point 660 feet east of the half section line, it is an anomaly inconsistent with the remainder of the service territory boundaries in Charles Mix County.

Northwestern Energy's contention is not supported by its own map. A "N.W.P.S. Co." map dated May 29, 1979 shows that the entire Southwest Quarter of the Northeast Quarter is plainly in CME's service territory. (See Petitioner's Exhibit No. 5.) Thus, Northwestern Energy is hard put to make the claim it is now asserting since its own map does not support its claim. It

would appear that Northwestern Energy has simply made a mistake and thereby significantly encroached upon CME's assigned territory.

3. Petitioner's Exhibits incorporated by reference.

Petitioner's Exhibits numbered 1, 2, 3, 4A, 4B, and 5 are attached hereto and incorporated herein by this reference.

4. Declaratory ruling requested.

Charles Mix Electric Association, Inc. hereby respectfully requests that the Commission define its electric service territory in Section 23, Township 99 North, Range 68 West of the 5th P.M., in Charles Mix County, South Dakota, and order Northwestern Energy to remove its service lines accordingly.

5. Supplemental filings.

Petitioner intends to supplement its filings herein with additional documents, written testimony (affidavits), and exhibits. Northwestern Energy is hereby put on notice that Petitioner will submit supplemental filings to the Commission regarding the matter in dispute.

Dated this 14th day of February, 2013.

Respectfully submitted,

Charles Mix Electric Association, Inc.

/s/ Mark W. Mengenhauser
Mark W. Mengenhauser, General Manager
Charles Mix Electric Association, Inc.
P.O. Box 10
440 Lake Street
Lake Andes, SD 57356
Telephone: 605-487-7321
mengenhauser@cme.coop

and

/s/ Michael J. Whalen
Michael J. Whalen (SBSD # 1820)
Michael J. Whalen Law Office, Prof. LLC
14 Saint Joseph Street, Suite 200A
Rapid City, SD 57701
Telephone: 605-341-5352
mwhalen@rapidnet.com
Attorney for Charles Mix Electric Association, Inc.