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1 TRANSCRIPT OF PROCEEDINGS, held in the
2 above-entitled matter, at the South Dakota State Capitol
3 Building, 500 East Capitol Avenue, Pierre, South Dakota,
4 on the 23rd day of April, 2013, commencing at 9:30 a.m.

1 CHAIRMAN HANSON: EL13-004. If I happen to skip
2 one of these as I'm going through -- I have a lot of
3 papers here, and if I miss one, please bring it to my
4 attention.

5 I believe we are at Docket EL13-004, In the
6 matter of the request for a declaratory ruling regarding
7 the electric service territory boundary between
8 Charles Mix Electric Association, Incorporated and
9 NorthWestern Corporation doing business as NorthWestern
10 Energy.

11 The question before the Commission is today how
12 shall the Commission rule on the location of the electric
13 service territory boundary shared by CME and NorthWestern
14 for its subject location?

15 I believe it is NorthWestern -- the filing was
16 from Charles Mix Electric Association.

17 MR. SMITH: I notice, Mr. Chairman, that Mike is
18 out of the room right now for a minute.

19 Is he going to be just a minute?

20 MS. NILSON: I sure hope so or he's going to
21 have to pay me a whole lot more.

22 MR. SMITH: Should we maybe take a five-minute
23 break?

24 CHAIRMAN HANSON: All right.

25 MS. NILSON: That will be great. It's going to

1 take me 2 minutes to set up.

2 CHAIRMAN HANSON: We're going to go on a
3 10-minute recess here. We'll start at 11:30.

4 (A short recess is taken)

5 CHAIRMAN HANSON: We are back on the web, and we
6 are back in order here. We have read Docket EL13-004,
7 and we are turning to testimony from Charles Mix Electric
8 Association.

9 Good morning.

10 MR. WHALEN: Good morning, Commissioners. My
11 name is Michael Whalen. I'm an attorney out of
12 Rapid City. I represent Charles Mix Electric. Assisting
13 me today is my secretary, Kassie Nilson, and also
14 available for the Commission's questions our general
15 manager, Mark Mengenhauser, from Charles Mix Electric.
16 And I think most people know him.

17 I'd like to begin by establishing I guess that
18 at the heart of the dispute begins with a discussion
19 about southwest Platte, in particular Sunset Acres
20 Development.

21 Kassie, please bring up that. That would be
22 Exhibit No. 6, I believe.

23 I have prepared compendium of the exhibits for
24 the Commissioners, their attorney, and Mr. Tysdal, and I
25 have also provided one to opposing counsel.

1 What's being displayed here, hearing Exhibit
2 No. 6, is Sunset Acres. And as you can see from what's
3 being shown there, it is located southwest of Platte.
4 Recently Platte annexed that southwest portion and
5 included this particular subdivision or development
6 within its territory.

7 If you look closely, you'll see that there is
8 room for 11 homes. And this brought the issue to a head.
9 In that regard, there was some five years ago the home of
10 Chad Johnson, which was built there in the northwest
11 corner of that subdivision. It was unnoticed by my
12 client for a period of five years.

13 However, once the additional homes starting in
14 2012 there was three homes built. There is currently one
15 under construction. So there would be a total of five
16 homes for the purposes of our visiting today. The
17 potential once again is for 11.

18 This might be the focus and the heart of this
19 discussion and this matter, but it actually includes more
20 acres than what's represented here, which is probably 12
21 to 14 acres with respect to that subdivision.

22 In order that we have a proper background, I
23 guess, to consider this matter, I'd like to display for
24 the Commission Exhibit No. 1, and I believe it is page 4.

25 Exhibit No. 1 is the Petition that we originally

1 filed. I'd like to direct your attention to the fact
2 that this is -- this particular exhibit came from the
3 archives, that is the vault, at the cooperative
4 headquarters in Lake Andes. And it represents our copy
5 going back to 1975, and the agreement is shown there and
6 being displayed in the upper right-hand corner of that
7 page of that exhibit.

8 You can see that it's dated December 22, 1975.
9 It's executed by the appropriate representatives of
10 both NorthWestern Public Service Company, which was the
11 predecessor for NorthWestern Energy, and by the manager,
12 Ed Ayers), of Charles Mix Electric back on that date.

13 The reason that I'm bringing this up is what
14 we're going to discover is this map which constitutes the
15 agreement, the heart of the agreement, is a little bit
16 different than the map that appears online and somewhat
17 different from the original map that Mr. Tysdal has in
18 his possession over there.

19 Kassie, please go to the next page of that
20 exhibit, and I believe it's Exhibit No. 2.

21 What you'll see depicted there is the western
22 part of Charles Mix County. And, Kassie, I'd like to
23 please call out the area around Platte. I hope you can
24 see that.

25 And I'm going to strain your eyes for a moment.

1 Because what's apparent from our original, from our
2 archives, is that the map does not reflect what is
3 currently online and for the Commission's online map.
4 Nor does it reflect what is, in fact, being offered by
5 NorthWestern here as their map.

6 And here's where I'm going to strain your eyes.
7 I want you to call out that portion of the southwest part
8 of Platte, please, Kassie.

9 Now it's difficult to see, but under the
10 coloring, particularly in the corners, you'll see right
11 angles. You'll also see what looks to be a cross hair
12 located there and there, and the record should reflect
13 I'm indicating on the monitor (indicating).

14 If you look very carefully, you'll see those.
15 But those corners, those right angles, are, in fact,
16 corners for 40-acre tracts. In other words, what
17 would -- the engineers or surveyors would call 16th
18 lines. Not 1/64th lines, but 16th lines.

19 Okay. You want to pull that back.

20 So what the point of this is, is that, in fact,
21 if we go back to the original documents, what we'll
22 discover is the boundaries are not what has been
23 suggested by NorthWestern Energy at this time. And I'm
24 going to show that clearer as we move through this
25 presentation.

1 Kassie, would you please bring up -- let's go to
2 hearing Exhibit No. 4.

3 Now this is taken -- the one on the right on
4 this exhibit is offered by NorthWestern. And the one on
5 the left is from our archives. And what I want to point
6 out to you is that -- and I'm sure you're all familiar
7 with dividing the section into quarter sections and then
8 into quarter quarter sections.

9 And in that regard, what we've gotten over the
10 course of the years is what I would call territory creep
11 or encroachment. There was a full 40 acres under each
12 side of the section line. There's a full 40 acres as
13 depicted in the original archived map.

14 And when we look at those two and compare it to
15 what's been offered by NorthWestern -- and I have that in
16 here as well. Let me see where it is.

17 I think if you would please go to -- I think
18 it's hearing Exhibit No. 9. And go to the third page.
19 Maybe the fourth page. Okay. Set that over on the
20 left-hand side, if you would, please, and then I want you
21 to call up another one for comparison sake, from the
22 Affidavit of Michael Sydow, and that would be hearing
23 Exhibit 11, page 3.

24 What I want to direct your attention to is not
25 only to creep to the west on the west side here, compare

1 that, please, to what appears on the so-called official
2 PUC map. And then also notice the difference from the
3 section line north to the boundary on what NorthWestern
4 has offered versus the quarter mile that's depicted on
5 the official map.

6 So what we've got and what we're contending here
7 and what I'm representing to you is that there is an
8 extra 40 acres on the west side of the NorthWestern map,
9 an additional 40 acres on the south side, and then we'd
10 have to consider the quarter. All total we've got
11 90 acres of creep.

12 That's not what Charles Mix Electric agreed to
13 when we filed when the agreement was made in 1975. The
14 agreement was fairly clear to the extent that before
15 someone got in there with their crayon and decided to
16 color outside the line. And if you look very carefully
17 at our map, the one that we have from that period of
18 time, we discovered that there's an overreaching to the
19 extent of 90 acres. That 90 acres includes Sunset Acres,
20 and that's an important subdivision or development to
21 Charles Mix Electric.

22 I also want to direct your attention to
23 something here, keeping in mind what you've already
24 seen.

25 And, Kassie, if you'd please go to trial

1 exhibit -- I'm sorry. Hearing Exhibit No. 7.

2 This represents, and I'll show you in a moment
3 when you call out the lower right-hand portion -- no, no.
4 The lower right-hand portion, that identifies the
5 original and date of this particular map.

6 I don't know if you can see it, but you can on
7 the packet I put in front of you. This is from
8 NorthWestern Public Service Company. This map is dated
9 May of 1979.

10 Now it was revised 19 years later, and we're
11 going to show you the 1998 map as well. If you could go
12 back to the main map and call out the southwest portion
13 of Platte, please.

14 This is NorthWestern Energy's own map. You can
15 see from what's being displayed that this is the boundary
16 as they in their internal documents established and used
17 for two decades.

18 Consequently there's, as I indicated before --
19 you know, I want you to color that in Kassie, two
20 different colors, and show where the 40 acres is north of
21 the section line.

22 The thing about this Trial Director program is
23 that it can only use straight lines, which is kind of
24 nice because what we're showing you here is two squares.
25 Not rectangles laid on their sides, but two squares of

1 40 acres each. That's what NorthWestern said it was for
2 two decades.

3 Now let's take and compare that to that -- and I
4 also want to note on the left-hand side, that is the west
5 side, that there is -- each one of these would be a
6 quarter of a mile. This -- what I'm indicating on the
7 map, this would be a quarter of a mile, 1,320 feet.
8 Likewise, 1,320 feet plus another 1,320 feet for a total
9 of a half-mile.

10 It's our contention that all along in
11 Charles Mix County, particularly western Charles Mix
12 County, never was there anything less than a quarter of a
13 mile utilized when these maps were drawn originally and
14 for a period of decades.

15 Let's now show the map that NorthWestern Energy
16 is offering. And I think that is -- that's a comparison,
17 please. And I think that would come from the Affidavit
18 of Michael Sydow. And we looked at that.

19 Okay. Would you make those sort of equal so
20 that the Commission can get a good comparison.

21 All right. The first thing that should jump out
22 at you is the fact that Charles Mix Electric has lost
23 20 acres here, 20 acres here, 10 acres in the corner,
24 20 acres to the west, and 20 acres also to the west and
25 further south.

1 If I could direct your attention to this
2 stairstep effect here and see that it is also in their
3 map, you can see the difference between the 1998 map on
4 the left-hand side and the 1979 map. This is what I'm
5 referring to as territory creep. That becomes important,
6 especially as these smaller towns, the few that are
7 expanding, do expand.

8 Now I want to point out another problem with
9 NorthWestern's maps as they offer them to you in their
10 exhibits. I want to point out -- let's look at the maps
11 of Geddes. And I think, Kassie, if you could pull up
12 hearing Exhibit 10 and No. 16 side by side.

13 Make those -- the east boundaries. Because you
14 might remember and I'm sure you read a lot of papers but
15 I'm going to direct your attention to the response by
16 NorthWestern Energy.

17 What they indicated in their responsive
18 Affidavit, their responsive pleading, was that, no, in
19 Charles Mix County we do, in fact -- in fact, Geddes is
20 the leading example of where we used the 1/64th line
21 rather than what I call the quarter section line but it's
22 actually a 1/16th.

23 But if you read our petition, what you discover
24 is we say except for a situation where the boundary, the
25 utility boundary, is coincident with the municipal

1 boundary. Except for that, we have generally used what
2 I'm going to call a quarter mile line uniformly. Their
3 response is, no, that's not true. But let's take a look
4 and see if it is.

5 Kassie, can you pull out the eastern side on the
6 exhibit on the right. Eastern side of Geddes. Make it a
7 little larger so we all can see it.

8 All right. Now I want you to compare those two.
9 You see that the corporate boundaries for the City of
10 Geddes is outlined there. By the way, this comes from
11 the PUC official map. This is the one that was offered
12 in response.

13 And can you make that a little larger so we can
14 see how the boundary of Geddes has changed.

15 All right. You see that although the eastern
16 boundary for the utilities appears to be the same,
17 somehow Geddes got moved over, the corporate limit for
18 the city of Geddes got moved over so as to create --
19 highlight this, please, Kassie. So as to create this
20 strip of land that is approximately an eighth of a mile
21 rather than a quarter of a mile. That's what their
22 response says, but it's just not true.

23 Moreover, for a map that's dated 1998 where is
24 this additional southern addition? Because that occurred
25 in 1989. This map isn't accurate. What NorthWestern

1 Energy has offered you is not accurate.

2 This is your own map. And it does show the
3 addition that occurred in 1989, and it shows that, in
4 fact, the boundary for the utility is the corporate
5 boundaries. I don't know. I guess Mr. Oostra will have
6 to explain that.

7 But let's look at where these boundaries are.
8 We've got a quarter mile here on the west, another
9 quarter mile north of the section line, quarter mile on
10 the east side, also on the north side of the section
11 line. Quarter mile, quarter mile.

12 Now let's go look at Platte. You can just pull
13 up -- Exhibit 7 will be fine.

14 All right. Okay. With regards to Platte, we've
15 got a quarter mile there in the northwest, another
16 quarter mile, once again quarter mile, crossing the
17 section line, quarter mile, quarter mile. And if you
18 look at it, that is consistent all the way through, but
19 suddenly we have the anomaly, the 1/64th, which, in fact,
20 did not exist on the original archived Charles Mix
21 Electric map.

22 This one is correct. This is theirs when they
23 did it right. But since that time -- and you have to --
24 using it for two decades. All the sudden there's that
25 creep, both on the south side and on the west side.

1 We submit that we want the boundaries that we
2 bargained for, that really have existed all of this time.
3 Mr. Mengenhauser is here for a good reason and that is to
4 explain to you and I'm going to ask him to explain now to
5 this Commission how it came to be that his folks, my
6 folks, my clients, didn't notice for five years that
7 Mr. Chad Johnson had built right up against the city
8 limits here and that in order to indicate that it was not
9 a voluntary waiver or anything else on our part,
10 Mr. Mengenhauser, would you please address the Commission
11 and tell them, why is it that Chad Johnson put a house
12 there in our territory that was serviced by NorthWestern?

13 MR. MENGENHAUSER: I'm Mark Mengenhauser. I'm
14 the general manager of Charles Mix Electric.

15 Mike's question to me was why didn't we notice
16 that right away? Well, it's in a section of town that
17 we -- there's no through traffic, no roads, and we did
18 not notice the construction until the last services were
19 built last fall and afterwards were started. So we just
20 didn't have access to that and weren't available to it at
21 the time.

22 Can I answer any questions?

23 COMMISSIONER HANSON: Do any of the
24 Commissioners at this time have any questions?

25 Thank you.

1 MR. WHALEN: Kassie, would you please pull up
2 hearing Exhibit 50, I believe, 5-0.

3 Okay. What this exhibit shows is the 1979 map
4 on the left with the 40 acres on either side of the
5 section line showing what we believe is the correct map,
6 and also at least on the right-hand side you can see the
7 creep that has occurred versus NorthWestern's own map
8 that is to the west there shaded in yellow. And that at
9 least from these maps -- and the one on the right is the
10 PUC map as appears online, there's still -- there should
11 be 40 acres there on the east side of the section line.

12 And then here there is now 60 acres, according
13 to the so-called official PUC map, rather than 40. We
14 submit that that is an error and has been an error and
15 that the original ought to control.

16 We have hired a licensed surveyor, registered
17 surveyor. His name is Brett Kennedy. And, Kassie,
18 please bring up trial Exhibit No. 8.

19 We've asked him to actually go out there, walk
20 it off, stake it, and try and determine where we think --
21 now I'll represent that NorthWestern Energy agrees but
22 where we think it is based on the original map.

23 And if you'll call out the upper right-hand
24 portion. In fact, let's see. Maybe we have a prepared
25 exhibit in that regard. Maybe No. 12.

1 All right. Now the two -- the red lines on each
2 of these two documents that are displayed, this is the
3 1979 map that NorthWestern used for two decades, and here
4 on the right-hand side is Mr. Kennedy's drawing of that.
5 And it's kind of off screen, but over here it says
6 May 29, 1979.

7 And what's nice about this is that it shows the
8 location of Sunset Acres. And we would like to indicate
9 to the Commission that that -- that right about there as
10 I'm showing you on the display is where NorthWestern
11 Energy claims the 1/64th line is. But, in fact, they
12 didn't claim that for two decades. That's my effort to
13 try and show you where Sunset Acres is with respect to
14 the disputed boundary.

15 So what do we propose?

16 Kassie, please pull up trial Exhibit No. 13.

17 We propose to actually use the old descriptions,
18 which should have been used really to start with. None
19 of us would be here or at least I wouldn't be here if
20 legal descriptions had been utilized instead of the map.

21 Well, you can see that this conforms to what
22 NorthWestern Public Service had in their internal
23 documents from 1979 through 1998. And we would
24 propose -- you can see down just as I indicated in
25 quarter quarter sections, and that's what we propose.

1 Now we think that's fair. That's in keeping
2 with the original map. And we'd like -- despite the
3 Staff -- where did Mr. Tysdal go? Despite his
4 recommendation, we think there's some problems with your
5 map, Mr. Tysdal. I guess this would be as good of time
6 as any to visit about that.

7 Let's take a look at what is -- I understand
8 Mr. Tysdal is responsible for, and that is hearing
9 Exhibit No. 5. And would you call out the author of that
10 map down in the bottom right-hand corner. That's you,
11 isn't it, Matthew?

12 MR. TYSDAL: Yep.

13 MR. WHALEN: Okay. Let's go back to it, please.
14 And would you call out this area? Can you do that,
15 Kassie? No. Not all the way down. That's good. All
16 right.

17 And then juxtapose into that that -- I think
18 it's Exhibit No. 6. And call out the middle portion
19 showing the S curve. Make this larger, please.

20 All right. That S curve right there that you
21 can all see on the left-hand side, I think that's a
22 Google or a variation of a Google. It corresponds with
23 the S curve here through Sunset Acres on the right.

24 And we know that the boundary that existed at
25 least for a couple of decades is located here to the east

1 of Sunset Acres, and the boundary as claimed now by
2 NorthWestern Energy almost tracks -- about 50 to 55 feet
3 of the westernmost portion of Sunset Acres is in
4 Charles Mix Electric's territory.

5 Now we see that Mr. Tysdal put that -- put the
6 boundary between the two right on the road, which doesn't
7 correspond with what Charles Mix claims, nor what
8 NorthWestern claims. And I would suggest that's a simple
9 mistake.

10 And, you know, it's very easy to make a mistake.
11 I was wandering around hallways when I was supposed to be
12 paying attention to you folks. And what I discovered on
13 the staircase going down -- I don't know if anybody saw
14 it, but the big staircase, the one at the top, the third
15 baluster on the left is upsidedown.

16 So I know and you can legitimately tell me that
17 I'm anal, but on these maps we need to be anal. And
18 that's -- I'll submit myself to any questions you might
19 have.

20 CHAIRMAN HANSON: Thank you. We will hear
21 from -- generally we wait until the very end and then ask
22 questions. However, if a Commissioner ever asks, then
23 they get to ask the question.

24 Commissioner Nelson has asked.

25 COMMISSIONER NELSON: Thank you. This

1 particular map, where did you get this?

2 MR. WHALEN: That was offered by NorthWestern
3 at a -- at a meeting between Charles Mix -- I believe
4 that's where it came from. That was sent to me by
5 Matthew Tysdal.

6 COMMISSIONER NELSON: Okay. Then if I might
7 ask, Matt, this is not one of your exhibits?

8 MR. TYSDAL: That's correct, Commissioner. I
9 made that map back in December so it was at the request.
10 This was when the issue first arose, and that was -- I
11 mean, first of all, understand that that is not a final
12 draft. That wasn't Staff's position.

13 It was to display roughly where the line would
14 be if it was at the 1/64th line. But, no, that is not
15 one of my exhibits.

16 MR. WHALEN: My apologies. We should have
17 just -- we should have Ollie North'd it.

18 COMMISSIONER NELSON: Thank you. Can you pull
19 back up PUC hearing Petitioners Exhibit 8, please.

20 MR. WHALEN: Kassie, Kennedy's map. Any
21 particular portion?

22 COMMISSIONER NELSON: Well, this is different
23 than what he had attached on his Affidavit.

24 Can you explain to me why this is different than
25 the Affidavit?

1 MR. WHALEN: Yes, I can.

2 Kassie, will you call out the area I am
3 indicating right there. Yes. You see where it says
4 1/64th.

5 COMMISSIONER NELSON: Yes.

6 MR. WHALEN: It said 1/32nd. By oversight of a
7 professional engineer. Yet again, an indication we're
8 all human. Consequently, I said, no. You go back and
9 you correct that. I'm not going to display it to the
10 Commissioners.

11 So pull back, please. You will note if you look
12 at the date somewhere in that area -- April 8, and that
13 is a modification that occurred between his Affidavit and
14 this one because he had 1/32nd down instead of 1/64th.
15 Other than that, it should be pretty much identical.

16 COMMISSIONER NELSON: So that everything is
17 crystal clear, 1/64th is, in fact, the appropriate
18 designation for that line, not 1/32nd?

19 MR. WHALEN: That's correct.

20 COMMISSIONER NELSON: I have to publicly
21 apologize to Mr. John Smith because yesterday I was
22 hollering at him that, no, a professional surveyor would
23 not make a mistake and reference something at 1/32nd when
24 it's 1/64. So my apologies, Mr. Smith.

25 MR. WHALEN: Mr. Smith is errorless at this

1 time.

2 COMMISSIONER NELSON: I guess the last question
3 I've got, you ended by talking about your proposed
4 solution to all of this.

5 Are you also proposing that if we were to accept
6 your solution, compensation for the infrastructure
7 NorthWestern has already placed in the ground?

8 MR. WHALEN: No.

9 MR. MENGENHAUSER: Yes.

10 MR. WHALEN: You want that? He's the boss.

11 CHAIRMAN HANSON: Because we're on record here,
12 we need to -- and since people cannot hear what is being
13 said off mic., you need to --

14 MR. WHALEN: Mr. Mengenhauser has indicated
15 that, yes, he does propose and would prefer then to
16 compensate for the infrastructure on the ground, and my
17 answer was wrong because I'm an attorney and not a
18 general manager.

19 COMMISSIONER NELSON: At this point that's all
20 the questions I've got. I greatly appreciate the
21 opportunity to clarify that before we go further. I may
22 have some other questions when we get done, but that's
23 all I need for now.

24 MR. WHALEN: Very well. And thank you very
25 much. Appreciate it.

1 CHAIRMAN HANSON: We're off record right now.

2 (Discussion off the record)

3 MR. OOSTRA: Good afternoon, Commissioners. My
4 name is Jon Oostra. I'm here on behalf of NorthWestern
5 Energy. I'm in-house corporate counsel in Sioux Falls.

6 With me is Michael Sydow. Mike Sydow is the
7 general manager of operations for South Dakota and
8 Nebraska. He's been with the company for, I believe,
9 35 years.

10 And I also have with me Ron Goglin. And Ron has
11 helped the Commission before in answering some of these
12 questions. I believe he's been with NorthWestern for
13 also nearing 35 years. And he is a land specialist and
14 works with our acquisition group on a lot of our land
15 matters.

16 I'm going to start off by just responding to a
17 couple of the -- one, what I will say is I think a pretty
18 significant flaw in Mr. Whalen's analysis, and that is
19 he's missing a map. And I'm not going to be critical of
20 him because up until yesterday I didn't have the same
21 map.

22 So when I filed my brief I was relying on the
23 maps that were on the PUC's website. And they're the
24 ones that I'll call the blue maps with the big wide blue
25 lines. And they do say -- when you look at them they say

1 that it's the official electric territory maps.

2 There's no date on them. And I made the
3 assumption, incorrect assumption, that those were the
4 maps from the 1970s. That was corrected by Mr. Tysdal in
5 his filing on Friday. And that was the first time that I
6 became aware of another whole set of maps for
7 Charles Mix County.

8 And those maps, in my opinion, are clear. So
9 although in my brief I refer to the blue maps as the
10 official maps, I've been corrected. I was not aware that
11 those were not official maps, but those were prepared by
12 Staff. And I'm not sure how long ago, but it sounds like
13 in the last I don't know how many years, but those aren't
14 the official maps.

15 So our position is that we would respectfully
16 request that you reject the claims of encroachment and
17 confirm the territory boundary on the north-south 64th
18 line in the southwest quarter of the northeast quarter of
19 Section 23.

20 When I took a look at the maps that Mr. Tysdal
21 provided on Friday and compared them up against the blue
22 maps, my analysis was that they were fairly consistent.
23 And so my argument is the same, and that is that we
24 should rely on the official maps.

25 Now what we didn't see in Mr. Whalen's approach

1 or in his analysis was much of the signed map from 1975
2 that they have in their possession. And the reason for
3 that is because it's not clear. Now you saw the
4 scribbled lines. You saw the crayon marks. It really is
5 not clear.

6 And, you know, that's the problem here is that
7 these maps, there really aren't any maps that are a model
8 of clarity. I'm not going to sit here and say that I can
9 tell you exactly, exactly where the line is.

10 I can tell you what we believe that the maps
11 suggest. And when you look at the official map and when
12 you do what Mr. Tysdal did in his analysis and you
13 compare the territory that was granted to NorthWestern in
14 Section 23 and you have to compare that territory from
15 the section lines, in other words, how far do we go east
16 into the west when looking at the other territories
17 around town, particularly where we did use 16th lines,
18 you can see that NorthWestern was granted what we believe
19 was a larger territory in Section 23.

20 Now going back to this issue of whether or not
21 we used 64th lines or not, and even on the Gettysburg --
22 or the Geddes map. I'm sorry. Gettysburg?

23 On the Geddes map if you go back and you look at
24 the official maps that Mr. Tysdal has and that Staff has,
25 you'll see some of the clarifications. You know, the

1 internal map that NorthWestern has -- and I'm sorry I
2 don't have it up in front of us here, but it doesn't show
3 the area below Geddes, and I don't think that the
4 original maps that the PUC have either.

5 I can't tell you why they set the line on the
6 64th line. I can't tell you why they would have done
7 that in Platte. I can tell you that we do believe it's
8 set on the 64th line in Geddes. So it is not some
9 anomaly that never occurred. And I can also tell you
10 that it's not inconsistent with what's been done across
11 the state in other areas. We use section lines. We use
12 quarter lines. We use 16th lines. We use 64th lines.
13 Okay.

14 And so when you look at the map that Mr. Tysdal
15 provided, our opinion is and our belief is it suggests a
16 line beyond the 16th line. And once you get beyond the
17 16th line, the next appropriate line to use would be the
18 64th line.

19 Now go back to the 1979 maps for NorthWestern.
20 That is a map that was utilized by NorthWestern. My
21 point is that, number one, it's an internal map. It
22 wasn't an official map. It was created -- and I'm going
23 to make some assumptions based on the fact that it was
24 1979. But it was probably created by a draftsman, a hand
25 drawing of that map based on what was available to him at

1 that time.

2 I've looked for maps clarifying between 1979 and
3 1998. We don't have any in our possession, to my
4 knowledge, but over time with technology improving, with
5 the ability to enlarge territories, with the ability to
6 draw lines with AutoCAD we took another look at those
7 territory maps and made the determination that the line
8 in that area of town was not correct. And so we adjusted
9 our line.

10 Now I don't think that's unreasonable. And, in
11 fact, it's actually I think consistent with what the
12 official map shows, and I think it's consistent with what
13 I'll call the blue map that Staff developed at some point
14 over time.

15 I think it's also important to note that it's
16 not a map that appears to have been created when Sunset
17 development was coming -- Sunset Acres was coming in.
18 The latest we believe it could have been created was in
19 that 1998 time frame when we were going through and
20 updating all our maps.

21 To the best of my knowledge, Sunset Acres didn't
22 come into play until at some point in 2005, 2006 when
23 Mr. Johnson started developing the property and built his
24 house.

25 So we recognize that the old map exists. We

1 don't think that it's a factor that overrides the
2 consideration that you should give to the official maps.
3 We believe that's where the analysis starts is taking a
4 look at the official maps.

5 We do believe that Staff did a very nice job in
6 explaining in their letter their position, and we agree
7 with that position. And we would respectfully request
8 that you rely on those official maps and confirm our
9 territory boundary again at the north-south 64th line
10 separating the southwest quarter of the northeast quarter
11 in Section 23 on the south side of Platte.

12 CHAIRMAN HANSON: Thank you. Did you wish to
13 share any of those maps that you have there, or are
14 they -- you made reference to them. I'm not -- I believe
15 we already have them.

16 MR. OOSTRA: No. That's fine. I think you do.
17 And it shows my lack of expertise. I wasn't planning on
18 sharing these today. I was trying to blow them up, and,
19 of course, they printed on legal paper and all the rest.

20 But, you know, this is the official territory
21 map, what I call the blue map. And, again, it's cut into
22 eight or 10 different sections. And this is the
23 official map, and I believe you have both of them in
24 front of you.

25 CHAIRMAN HANSON: Okay. Thank you for that

1 clarification. Yes, we do.

2 I'd like to hear from Staff at this time.

3 Mr. Tysdal.

4 MR. TYSDAL: Yeah. Thank you, Mr. Chairman.

5 So I think to start, I want to touch base on
6 some of the things I said in the letter in general
7 terms.

8 So sort of the problem that we have here is that
9 Charles Mix has a signed map just like we do. My
10 understanding of what I know of the project is I thought
11 that back in the '70s each company probably drafted these
12 maps, made copies for each other, and then submitted one
13 to the PUC. So, I mean, that's my understanding anyway.

14 But, of course, these are hand drawn, and so
15 you're going to find subtle differences between the
16 copies, and you'll find, I think, human error. And I
17 think that's what we see in Charles Mix's map is, first
18 of all, while it does appear to my eye in their map that
19 there is more territory allotted to NorthWestern in
20 Section 23 than in Section 24, that north-south boundary
21 seems to line up perfectly with that north-south boundary
22 in section 11, which all parties agree is at the
23 16th line.

24 So that would indicate that there's something
25 wrong in Section 24. And it does, in fact, appear that

1 the north-south boundary in Section 24 on Charles Mix's
2 map is further west than perhaps where the 16th line
3 would be.

4 So I only bring those problems up with
5 Charles Mix's map to establish that when we're depending
6 on a hand drawn map there will inevitably be issues and
7 mistakes. And I think that those that I flagged on
8 Charles Mix's map I think can be attributed to human
9 drawing error.

10 Since NorthWestern has conceded the point that
11 the maps found online are not, in fact, the official
12 maps, I don't want to spend a lot of time on those, other
13 than to point out that when they were drafted -- and I
14 don't know when that was -- the person that did it has
15 since left the Commission. It seems to me he did
16 obviously interpret the line in Section 23 to be at the
17 64th.

18 So, finally, I'll move on to my map here. And I
19 do -- I should probably apologize to both parties for not
20 producing this recommendation earlier. But I don't think
21 there are -- there are profound differences with it and
22 the other two maps presented but more subtle.

23 From Staff's perspective it does appear that
24 Section 23 there is more territory allotted to
25 NorthWestern than in Section 24. There is a noticeable

1 difference between the north-south boundary in Section 23
2 and Section 11 in that the one in Section 23 is farther
3 to the west. So if both parties concede that
4 Section 11's north-south boundary is located at the
5 1/16th line, it would indicate to us that the boundary in
6 Section 23 is, in fact, at the 64th.

7 As I ramp up -- and that -- I stated all of that
8 in the letter, and I hold to that now.

9 The other thing I brought up is that in its
10 original Petition Charles Mix did bring up a number of
11 other factors for consideration, which I stated we did
12 not evaluate in making our recommendation. And we
13 didn't -- we did that not because we don't think that
14 they're important or that they're not material but
15 because we think that it should be for you Commissioners
16 to decide if they are or not.

17 Our perspective is that we have to depend on the
18 maps that are filed with the PUC, and that's why
19 ultimately we went with the recommendation that we did.
20 Because I think you could draw a different recommendation
21 from using Charles Mix's map. And the problem is that
22 it's also signed by both NorthWestern and Charles Mix
23 Electric.

24 So, you know, we're kind of in a sticky
25 situation here in that everybody's working off of maps

1 that were drafted in the '70s where roughly
2 seven-sixteenths of an inch, and that can change
3 depending on the ruler you're using, represents a mile.
4 And the difference in the boundary we're talking about
5 right now is 660 feet. So it's an eighth of that
6 distance. So you can do the conversion, but an eighth of
7 seven-sixteenths of an inch is not significant.

8 So we've made a recommendation that the
9 boundaries at the 64th line based on what we estimate
10 from an examination of these maps with the naked eye.
11 The maps are not perfect. There's ambiguity even in
12 ours, although I do think ours is more clear than the one
13 Charles Mix has.

14 However, you know, I can think of a number of
15 scenarios that might leave one to believe -- or might
16 leave one to think that the boundary was drawn as it is
17 for a number of reasons. And I won't go into those, but
18 that's my point is that it -- you know, you're looking at
19 this with the naked eye. It's tough.

20 We're going through this process now of
21 establishing these boundaries and writing out legal
22 descriptions, and we depend on the consent of the
23 companies. You know, Mr. Whalen pointed out that the map
24 that I provided to NorthWestern back in December, and I
25 think he pointed out rightly that the 64th line is marked

1 incorrectly on there. I mean, so there are problems with
2 our map too.

3 So we depend on the companies to review our
4 boundaries and tell us when they have issues. So we've
5 arrived at this, the circumstance that we have today,
6 unfortunately, because we weren't able to work out an
7 agreement prior to this happening.

8 But, you know, I guess my overriding point to
9 you is that we've made a recommendation, but it's a soft
10 recommendation. I don't know that you do or do not want
11 to evaluate the other factors that Charles Mix placed in
12 their Petition, but, ultimately, from our perspective it
13 seems that the boundary is located at the 1/64th line.

14 So I'm available for any questions that you
15 might have.

16 CHAIRMAN HANSON: Thank you, Mr. Tysdal.

17 Turn to -- I believe that's all the folks that
18 are -- from Staff that are going to testify; is that
19 correct?

20 We'll turn to questions from the Commissioners
21 at this time.

22 Commissioner Nelson.

23 COMMISSIONER NELSON: A couple of questions for
24 NorthWestern.

25 Charles Mix Electric submitted to us a map that

1 was signed back in the '70s by both parties. You're
2 familiar with that. Staff in its Exhibit B submitted as
3 to us a map that was signed by both parties back in the
4 '70s.

5 Why has NorthWestern not brought forth their map
6 that was signed by both parties in the '70s?

7 MR. WHALEN: I'm going to ask Mr. Goglin to come
8 up. He has a bit more experience than I do.

9 MR. GOGLIN: The reason is we don't have a
10 map --

11 MR. SMITH: Can you introduce yourself, Ron?

12 MR. GOGLIN: Ron Goglin, NorthWestern Energy.

13 In our file we do not have a map that's signed
14 by both parties. We had a map that he has a copy of that
15 says Official Map on it, but it is not dated and not
16 signed.

17 COMMISSIONER NELSON: Thank you.

18 The next question I guess I've got, if you could
19 maybe help us understand, if I understood Charles Mix
20 correctly, there are currently four residences that you
21 are serving; is that correct? And a fifth one being
22 constructed; is that correct?

23 MR. GOGLIN: I believe that's correct. But Mike
24 Sydow would be able to answer that better than I can. He
25 has that information.

1 MR. SYDOW: Good afternoon. I'm Mike Sydow,
2 general manager of T&D Operations for South Dakota and
3 Nebraska with NorthWestern.

4 COMMISSIONER NELSON: And my question was it's
5 my understanding that you're currently serving four
6 residences in Sunset Acres and a fifth one being
7 constructed; is that correct?

8 MR. GOGLIN: I believe that's correct.

9 COMMISSIONER NELSON: Can you tell us what kind
10 of infrastructure that you have placed into that area in
11 order to serve those and any future residences that might
12 be constructed?

13 MR. SYDOW: I believe -- it's underground
14 infrastructure. I believe it's single phase. I would
15 need to confirm that in its actuality. To make sure it's
16 three phase or single phase is the part I'm uncertain of
17 when we bring it down into that subdivision.

18 COMMISSIONER NELSON: And so what kind of feeder
19 facility? You don't know what kind of feeder facility
20 you brought down into that area?

21 MR. SYDOW: Feeder facility, meaning what type
22 of wire?

23 COMMISSIONER NELSON: Exactly.

24 MR. SYDOW: It would be 1 OP jacketed
25 underground cable.

1 COMMISSIONER NELSON: Okay. And sufficient to
2 serve the entire subdivision, should it all be built out?

3 MR. GOGLIN: 1 OP jacket of cable would be
4 sufficient to serve 11 homes, yes.

5 COMMISSIONER NELSON: I think that's all the
6 questions I've got. Thank you.

7 CHAIRMAN HANSON: Thank you.

8 Commissioner Fiegen, do you have any questions?

9 COMMISSIONER FIEGEN: You know, my main
10 concern is that we go back to 1975 and look at what the
11 original map said. And I don't know if you showed that,
12 Charles Mix.

13 Did you show the map of 1975 that is the
14 official map with the PUC Commission?

15 MR. WHALEN: We did. Would you like us to bring
16 it up?

17 COMMISSIONER FIEGEN: Yeah. Could you pull that
18 up?

19 It's tricky because the 1975 -- I wasn't a
20 legislator, but I sure wish they would have given
21 utilities more than six months to develop these maps, and
22 we would have descriptions instead of nearly crayon
23 drawings, I mean, kind of. So you never know. But the
24 official map of 1975 that's on the Commission --

25 MR. WHALEN: The Commission's?

1 COMMISSIONER FIEGEN: Yes.

2 MR. WHALEN: Okay. The blue map? Is that what
3 you're asking for?

4 COMMISSIONER FIEGEN: Well, I have a pink one.

5 MR. WHALEN: Okay. I don't have that one. That
6 one came out Friday.

7 CHAIRMAN HANSON: I believe you have presented
8 this as Petitioner's Exhibit 2. It's on page 5. And
9 then you blew that up; isn't that correct?

10 MR. WHALEN: Yeah. That's ours that came out of
11 our archives out of the vault. We can bring that up if
12 you like.

13 MR. SMITH: It's Staff Exhibit B.

14 CHAIRMAN HANSON: Staff Exhibit B.

15 MR. WHALEN: B. Is this the one that you're --

16 CHAIRMAN HANSON: Excuse me. Nobody's going to
17 chat because we have someone trying to type.

18 So Commissioner Fiegen has the floor, and the
19 Chair will occasionally interrupt to make certain that
20 we're going on a direction here.

21 COMMISSIONER FIEGEN: So my question is if he
22 has showed us the map that is on --

23 CHAIRMAN HANSON: And I will ask if someone has
24 that map, please indicate.

25 MR. TYSDAL: Mr. Chairman, I think the map that

1 I produced with the letter that I released on Friday is
2 not a part of his presentation, I think; right?

3 Correct, Mr. Whalen?

4 MR. WHALEN: That's correct.

5 COMMISSIONER FIEGEN: Okay. So, you know,
6 that's a -- all the maps that you showed we just have to
7 remember what the court is going to say and what the
8 court precedence is. And it's the official map. So we
9 have to go back to the official map.

10 And I guess I don't have anymore questions for
11 you, but I just wanted to make sure -- if you showed it,
12 I wanted to see it because I have the Staff Exhibit B
13 because I wanted you to compare it with other things that
14 you had. But since you don't have it, we're not going to
15 do a comparison today.

16 But as a Commissioner that's the map I have to
17 look at. I can't go look at NorthWestern's internal maps
18 because the courtroom, the Supreme Court, certainly has
19 shown that that's not what we need to look at.

20 So if you don't have them to compare, I have no
21 further questions.

22 CHAIRMAN HANSON: Any further questions from
23 either of the Commissioners?

24 Seeing none, we'll close it to -- excuse me.

25 MR. SMITH: I just have one question that

1 doesn't have anything to do with substance.

2 But in terms of the documents, my understanding
3 is that the parties had a conversation about their
4 willingness to basically accept the exhibits that you had
5 here as acceptable for an official record in case this
6 were to go up on appeal. Is that --

7 MR. WHALEN: That's correct.

8 What you'll find, Commission, and Mr. Smith, in
9 the record is a motion for an evidentiary hearing and
10 then retraction and withdrawal of that based upon a
11 stipulation that these documents become part of the
12 record in the event that an appeal might be appropriate
13 and necessary.

14 MR. SMITH: Do you want to --

15 CHAIRMAN HANSON: Thank you for that
16 clarification.

17 Does NorthWestern attorneys, counsel wish to --

18 MR. OOSTRA: I just want to make one brief
19 statement with regard to the last question.

20 CHAIRMAN HANSON: Please step to the mic. Thank
21 you.

22 MR. OOSTRA: We did have a discussion with
23 regard to the exhibits that were put into the record. We
24 don't take exception with those original maps.

25 Part of what we've -- we agreed to did not

1 include at that point the official map. So at that point
2 again I was incorrectly referring to the blue map as the
3 official map.

4 The only exception we had to the exhibits was
5 that there was a -- the 1979 line -- the 1979 line was
6 dropped onto the survey. And we took exception to that.
7 And my understanding was -- because we didn't feel that
8 the surveyor surveyed that actual line.

9 The surveyor just put that line on the survey at
10 the request of Charles Mix. So we did take exception to
11 that, and I wanted to make sure that was in the record.

12 And it's my understanding, and Mr. Whalen can
13 clarify, that they weren't using that exhibit for the
14 purposes of establishing the line.

15 MR. WHALEN: No. That's correct.

16 MR. SMITH: Basically what I was getting at is
17 not that anybody agrees necessarily with what anything
18 shows or doesn't show but just that we can accept those
19 as an official record here for just in case this thing
20 were to go up the ladder.

21 And we may; is that correct?

22 What about Staff's Exhibit B? I know it didn't
23 exist when you guys had your chat. Just for the purposes
24 of the official record, does anybody have a foundation
25 objection to that or anything like that?

1 MR. WHALEN: No objection from Charles Mix
2 Electric as to foundation or authenticity.

3 MR. OOSTRA: No. I just -- I'm missing the
4 bundle of maps that were given to us today, all the stuff
5 that was done in the PowerPoint.

6 CHAIRMAN HANSON: And you are receiving one now.

7 MR. OOSTRA: And I'm sorry. I just wanted to
8 quickly clarify that there was nothing in here that we
9 had taken objection to.

10 CHAIRMAN HANSON: Go ahead and -- Commissioner
11 Fiegen, do you have a question of --

12 COMMISSIONER FIEGEN: I just have one more
13 clarification question. I'm going to ask Staff first
14 because I know you said this, and then I want to ask the
15 other parties.

16 In the official map that we think is official
17 that we saw Friday uploaded on our website what you said
18 is that Section 11, we believe that boundary is at the
19 1/16th?

20 And then the boundary west in the Section 23, is
21 that 1/64th? Is that correct?

22 MR. TYSDAL: That's correct, Commissioner.

23 COMMISSIONER FIEGEN: So that line is not
24 straight. Well, it might be straight, but it's not
25 perpendicular.

1 MR. TYSDAL: Right. You're kind of hitting the
2 nail on the head here right now in that you're looking at
3 it with the naked eye, and it's very difficult to tell.
4 If you hold a ruler to it, you'll see the boundary in 23
5 is farther west than in Section 11.

6 COMMISSIONER FIEGEN: So both parties, could you
7 comment on that map? Because that's certainly a deciding
8 factor in our hearing today.

9 MR. OOSTRA: And we read the map the same way.
10 When I look at that map I see a couple of things.

11 Number one, I see the line from the section line
12 being longer to the west as compared to the east. Where
13 on the section line going to the east you can see in
14 Section 24 it's supposed to be on the 1/16th line. We
15 agree with that. So it is a broader -- it is a larger
16 territory to the west. Okay.

17 And then I think what Mr. Tysdal was indicating
18 is if you go up to 11, again, the line in 23 when you
19 measure it to the west goes further to the west than the
20 line in Section 11. It's certainly longer than the line
21 in Section 12. And that, again, is -- I realize we're
22 dealing with some imprecise drawings, but that's our
23 argument.

24 COMMISSIONER FIEGEN: Thank you.

25 MR. WHALEN: In answer to your question, if we

1 could -- Kassie, would you please pull up hearing Exhibit
2 No. 3. And let's take the ruler that you have in this
3 computer and draw north-south lines through the center
4 from north to south in the corners. Yeah. Also east to
5 west. That's good.

6 That's our answer, Commissioner Fiegen.

7 COMMISSIONER FIEGEN: But what map is this one?

8 MR. WHALEN: The official PUC map as published
9 online. Consequently, what we're saying -- what we're
10 saying here is that if the north boundary is an
11 indication of where the lines ought to be in the south
12 and you line them up, what you discover is that there is
13 660 acre -- there's a, I'm sorry, 660 feet strip, wide
14 strip, too much on the west side here where that FAS is.
15 And that's where Sunset Acres is.

16 And then if you run the line also east to west
17 just south of the section line, you discover that it is
18 consistent. This is, in fact, an anomaly and is not one
19 that should be on the official map. That's our answer.

20 Does that help or not?

21 COMMISSIONER FIEGEN: So Staff -- the map that
22 we have in Exhibit B is the official map; correct?

23 MR. TYSDAL: Commissioner Fiegen, it is our
24 opinion that in the case of a dispute as we have today
25 that the PUC needs to rely on the maps that were filed

1 with the Commission in the '70s. And in this case that
2 would be Staff's Exhibits A and B. B is simply a zoomed
3 in view of Exhibit A on Platte.

4 COMMISSIONER FIEGEN: So it certainly appears to
5 me that NorthWestern in 1975 was granted extra acreage in
6 Section 23.

7 CHAIRMAN HANSON: In '75 you're saying?

8 COMMISSIONER FIEGEN: Yeah. The original map of
9 1975, I believe. Was the original map of 1975? Right?
10 December of 1975. Because the legislature only gave them
11 like less than six months.

12 CHAIRMAN HANSON: Thank you. Any further
13 questions at this time?

14 Is there -- is there any discussion preceding a
15 motion or is there a motion?

16 COMMISSIONER NELSON: If I might have some
17 discussion, Mr. Chairman.

18 CHAIRMAN HANSON: Go right ahead.

19 COMMISSIONER NELSON: To Commissioner Fiegen,
20 just so that we're very, very clear, this blue map is a
21 later rendition. And so I don't know that we can give it
22 any credibility.

23 And as I try to find the answer to this question
24 there are really only two maps that I'm looking at. I'm
25 looking at the map that Charles Mix Electric -- the

1 official map that was signed by both parties in the '70s.
2 I'm looking at that map, and I'm looking at Staff
3 Exhibit B. Because that also was a map signed by both
4 parties in the '70s.

5 So I consider those to be maps that were
6 unequivocally agreed to by both parties at that time.

7 NorthWestern for whatever reason can't find
8 their version of that, and so we don't have a third
9 option to look at. And so these are the two I'm looking
10 at.

11 Having said that, I've had my ruler out, as does
12 everybody else, and drawn the lines on both of these two
13 maps. And particularly on Staff Exhibit B, which is the
14 clearer of the two, the line is exactly halfway between
15 the quarter mile line and the 1/64th. It's exactly
16 halfway.

17 If I look at the map that Charles Mix Electric
18 submitted, and it is a little fuzzier and the line is not
19 straight and I think we all know that but, in essence, it
20 is halfway between the quarter mile line and the 1/64th
21 line.

22 And so if I had to make a -- if I had to make a
23 judgment as to where those two official maps placed the
24 line, it's going to be halfway between those two going
25 right through the middle of Sunset Acres.

1 Okay. Maybe I do have a question out of this.
2 Is there either side that would be comfortable with a
3 ruling running the line through the middle of Sunset
4 Acres?

5 Mr. Whalen?

6 MR. WHALEN: Could I visit with my manager?

7 COMMISSIONER NELSON: Absolutely.

8 COMMISSIONER FIEGEN: And is that the 1/28th
9 line; right?

10 COMMISSIONER NELSON: I don't know what you'd
11 call that line because none of our maps have that line.
12 It's --

13 COMMISSIONER FIEGEN: That's where my
14 measurements are too is right between.

15 CHAIRMAN HANSON: While that is taking place I'm
16 looking at the official map. And the interesting thing
17 about the official map, the actual one that was drawn, is
18 if you put it on its side and look precisely down the
19 line as you stated, the line is at an angle, and it
20 begins the angle way up in Section 11 and continues
21 through Section 23, which is an oddity that I think we
22 can all recognize was not intended.

23 One would not draw a line starting at that
24 quarter quarter quarter point in Section 11 and draw it
25 through Section 23 to the end. Obviously, the intent was

1 to draw a perfectly north-south line there, and as it was
2 drawn you can see that it just varied from that position.
3 And that's where we come up with the oddity on the
4 Section 23.

5 COMMISSIONER NELSON: Mr. Whalen.

6 MR. WHALEN: In response to your question, we
7 would prefer that the baby not be cut in half.

8 COMMISSIONER NELSON: Thank you.

9 Mr. Oostra.

10 MR. OOSTRA: I believe we're of the same
11 position.

12 I'd like to have Mr. Goglin just briefly discuss
13 that from a surveying perspective.

14 MR. GOGLIN: One thing. The line drawn through
15 the middle of the subdivision to me does not make logical
16 sense because the subdivision didn't exist at that time
17 so they would have used a landline one way or the other
18 on the map.

19 So it depends on what map, like you say, and
20 seven-sixteenth of an inch or whatever is 660 feet. So
21 the fact that the line goes down the middle, I think you
22 need to refer to the closest landline to that line, which
23 would be the 64th or the 16th, whatever you decide. We
24 say the 64th, and Charles Mix thinks it's the 16th.

25 COMMISSIONER NELSON: Thank you.

1 MR. GOGLIN: The difference so --

2 COMMISSIONER NELSON: Thank you. I appreciate
3 both sides. I was hoping that was going to be the answer
4 because I really didn't want to go there. Although the
5 precedent and I believe the law says that the maps
6 govern, and if we were to truly utilize the maps those
7 two official maps, that's exactly where the line would
8 go.

9 But since that is not acceptable to either side,
10 and, frankly, I didn't want to do that, I think that's a
11 poor answer, I am prepared to make a motion unless
12 somebody else wants some additional discussion.

13 CHAIRMAN HANSON: Just -- Mr. Smith.

14 MR. SMITH: Mr. Oostra, I just wanted to make
15 sure now you didn't have a foundation or at least basic
16 admission objection.

17 MR. OOSTRA: No. Thank you.

18 MR. SMITH: And is that true with respect to
19 Staff's letter and exhibit as well?

20 MR. OOSTRA: Correct.

21 MR. SMITH: Mr. Whalen.

22 MR. WHALEN: I agree.

23 MR. SMITH: Thank you.

24 CHAIRMAN HANSON: Mr. Whalen agreed.

25 Continuing the discussion, it will be

1 interesting to see where -- I think the two of us are
2 going to end up disagreeing, but that's -- I'm just
3 guessing at this juncture.

4 COMMISSIONER NELSON: That's happened before.

5 CHAIRMAN HANSON: Yes, it has.

6 As I said, when I look at the original map, and
7 I think we all recognize that it was not drawn as they
8 had at least intended, and we all agree that the law
9 states that the maps are supposed to take precedent, the
10 one thing that clarifies it for me is the subsequent maps
11 that were drawn as a result relying upon it.

12 And certainly since this was a 1975, 1976
13 action, that when NorthWestern drew its map in 1979,
14 certainly they had the ability for being a participant in
15 the entire process. They -- Martin Bigma [phonetic] was
16 here, the discussions were all fresh, and they drew their
17 map at that time based upon all of that information and
18 discussions.

19 So it clarifies it for me by stating that
20 NorthWestern understood it to be the location that they
21 show in Petitioner's Exhibit No. 5 as the May 29, 1979
22 map.

23 Any further discussion?

24 Commissioner Fiegen.

25 COMMISSIONER FIEGEN: Mr. Chairman, I mean, it

1 has been interesting because we certainly have got our
2 rulers out and done a lot of measurement. And when I
3 look at the measurement, and certainly I'm not a
4 surveyor, it's actually kind of between the 1/64th and
5 the 1/28th. It's kind of in the backyard of those last
6 lots. And so then I have to look at, you know, what line
7 is closer. And I believe it's the 1/64th.

8 I have to go back to that original map. I can't
9 look at -- I mean, for me personally I can't look at the
10 internal maps because they don't take precedence in the
11 courtroom. So although I would like it in the backyard
12 of those lots, I don't believe I can do that, and the
13 1/64th is where I'm going to fall today.

14 CHAIRMAN HANSON: Is there a motion?

15 COMMISSIONER NELSON: I would move that we grant
16 Charles Mix Electric's Petition and that the line be
17 drawn on the quarter mile 1/16th line.

18 CHAIRMAN HANSON: Discussion on that motion.

19 COMMISSIONER NELSON: Well, as we've already
20 talked about, I believe that both of the official maps
21 that are signed by both parties have the line in the
22 middle, that is both parties have said that's not where
23 they are comfortable with us actually drawing the line.

24 And so then I have to look at all the rest of
25 the evidence to determine where did they truly intend to

1 draw that line. And the things that I consider, first of
2 all, is the fact that NorthWestern did not bring to us an
3 original map signed by both parties. For whatever reason
4 they can't find it, it isn't there, but they didn't bring
5 that to us, and so I consider that.

6 But perhaps most compelling to me was the
7 testimony this morning and the maps dealing with Geddes.
8 Because up to this point NorthWestern had been contending
9 that, yes, in Geddes we use the 1/64th lines, but the
10 testimony this morning or the argument, I should say, and
11 the maps showing that the reason it was on that 1/64th
12 line is because that's where the city boundary was. That
13 to me was compelling.

14 And so what that tells me is that there was or
15 is, in fact, some precedent within Charles Mix County to
16 use 1/16th lines, the quarter mile lines, and not the
17 1/64th. And I do think it would be odd that this would
18 be the only place in Charles Mix County where a 1/64th
19 line was used.

20 And so that is the reason that I am supporting
21 Charles Mix's Motion.

22 CHAIRMAN HANSON: Thank you. Further
23 discussion?

24 I stated earlier what my position was and the
25 clarification that I felt when I saw it, and I guess we

1 do agree.

2 COMMISSIONER FIEGEN: And I, first of all, want
3 to thank the parties for coming. You guys did a great
4 job of bringing us testimony and maps, and we certainly
5 appreciate all the hard work.

6 CHAIRMAN HANSON: Thank you.
7 Commissioner Fiegen.

8 COMMISSIONER FIEGEN: Fiegen votes no.

9 CHAIRMAN HANSON: Commissioner Nelson.

10 COMMISSIONER NELSON: Aye.

11 CHAIRMAN HANSON: Commissioner Hanson votes aye.
12 The Motion carries.

13 COMMISSIONER NELSON: If I might and I maybe
14 should have included there in my motion I do think we
15 have to deal with the issue of compensation of
16 infrastructure.

17 Mr. Smith, do you have a recommendation on how
18 we should handle that?

19 MR. SMITH: I don't know. Any -- the parties,
20 do you have any suggestions or like, Mike, would you guys
21 want to have a chat first with each other maybe after
22 this, and we'll take that up, if need be, at a subsequent
23 Commission meeting?

24 Mark? What do you think?

25 MR. MENGENHAUSER: Yeah.

1 MR. SMITH: You guys talk it over. Thanks.
2 Thank you.
3 (The proceeding is concluded)
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1 STATE OF SOUTH DAKOTA)

2 :SS

CERTIFICATE

3 COUNTY OF SULLY)

4

5 I, CHERI MCCOMSEY WITTLER, a Registered
6 Professional Reporter, Certified Realtime Reporter and
7 Notary Public in and for the State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed
9 shorthand reporter, I took in shorthand the proceedings
10 had in the above-entitled matter on the 23rd day of
11 April, 2013, and that the attached is a true and correct
12 transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 9th day of
14 May, 2013.

15

16

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18

Cheri McComsey Wittler,
Notary Public and
Registered Professional Reporter
Certified Realtime Reporter

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