

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

<b>IN THE MATTER OF THE REQUEST FOR A )</b>	<b>DECLARATORY</b>
<b>DECLARATORY RULING REGARDING THE )</b>	<b>RULING REGARDING</b>
<b>ELECTRIC SERVICE TERRITORY BOUNDARY )</b>	<b>TERRITORY</b>
<b>BETWEEN NORTHWESTERN ENERGY AND )</b>	<b>BOUNDARY</b>
<b>CODINGTON-CLARK ELECTRIC COOPERATIVE, )</b>	
<b>INC. )</b>	<b>EL12-040</b>

On May 25, 2012, the South Dakota Public Utilities Commission (Commission) received a Petition for Declaratory Ruling and supporting Exhibits and Affidavit (Petition) from NorthWestern Corporation d/b/a NorthWestern Energy (NWE) requesting that the Commission define the electric service rights territorial boundary between NWE and Codington-Clark Electric Cooperative, Inc. (Codington) in Section 3, T116N, R52W, Codington County, South Dakota (Section 3). The Petition asserts that the boundary lies on the southern boundary of Government Lots 1 and 2 in Section 3 and that its assigned territory therefore encompasses the entirety of Government Lots 1 and 2 in Section 3. On June 29, 2012, Codington filed a Resistance of Codington-Clark Electric Cooperative to Petition and supporting Affidavit and Exhibit. On July 3, 2012, the city of Watertown (Watertown) filed a letter in opposition to NWE's position and supporting Exhibits. On July 13, 2012, the Commission's Staff (Staff) filed Commission Staff's Response and Recommendation on Northwestern Energy's Petition for Declaratory Ruling and supporting Exhibits. On August 3, 2012, Watertown filed a map of the Titan Addition Land Location and explanatory letter. On August 10, 2012, NWE filed NorthWestern Energy's Reply Comments and Second Affidavit of Ron Gogolin.

On May 25, 2012, NWE served the Petition by U.S. mail on Codington and Watertown, and on May 31, 2012, the Commission electronically transmitted notice of the Petition and the intervention deadline of June 15, 2012, to interested individuals and entities. Codington and Watertown appeared and filed responsive pleadings or comments and supporting exhibits. The Commission has jurisdiction over this matter pursuant to SDCL 1-26-15, Chapter 49-34A, specifically, 49-34A-42 through 44 and 49-34A-49 through 55, and ARSD 20:10:01:34 and 20:10:01:35.

At its regular meeting on August 14, 2012, the Commission considered this matter. NWE, Codington, Watertown, and Staff appeared and presented additional comments and argument. Based on its measurements of the official Codington County territory map on file with the Commission, the maps appended to the agreements between NWE and Codington that were approved by the Commission in 1976 pursuant to SDCL 49-34A-43 as defining the territorial boundary between the two parties, and the other maps filed in this docket, Staff concluded that the boundary lies on the half quarter section line forming the north boundary of the south half section of the northeast quarter section of Section 3, which is also the southern boundary of Government Lots 1 and 2. Staff accordingly recommended finding in favor of NWE's position.

Codington and Watertown presented comments and documentation that, since 1977, Codington has been serving a rural home site that lies at least partially north of the northern border of the SE¼ of the NE¼ section and therefore at least partially within the territory that NWE and Staff assert is the assigned service territory of NWE. Staff's Exhibit E depicts the home site in question. Codington and Watertown argue that NWE's failure to claim service rights over this customer until now is persuasive evidence that the territorial boundary is located north of the half quarter section line which is also the southern boundary line of Government Lots 1 and 2. Staff commented that its territory mapping project has shown it is not uncommon for service to customers outside the territorial boundary of a utility to be provided by the

non-assigned utility when the customer location falls near the boundary line and that it has encountered numerous undocumented service exceptions in the boundary studies completed to date. Staff stated that this has been shown to be due simply to history and a lack of vigorous discipline by utilities in the past in determining precise boundary locations relative to isolated service locations and in urban development areas. Staff recommended that the existence of an isolated service exception should not be relied upon to define a boundary that is different from what the official territory maps and agreements demonstrate it to be and also recommended that Codington should be granted a service rights exception for the location it is currently serving as the Commission has done in virtually all of the territory determinations to date in the territory mapping project.

Finding (i) that measurements performed by both Staff and Commissioners and Advisors themselves of the official territory map in the Commission's records covering Section 3, and of the maps appended to the NWE/Codington territory agreements on file, indicate that the boundary line lies on the half quarter section line and southern boundary of Government Lots 1 and 2 of the NE $\frac{1}{4}$  of Section 3, (ii) that there is no legal description in either the NWE/Codington territory agreements or on the official territory map for the area that would specify a contrary location, (iii) that in the absence of a contrary legal description or obvious physical feature that would appear to coincide with the location of the boundary as shown by measurements of the official territory map or territory agreement maps, boundary lines have generally been found to lie on the legal land line most coincident with the boundary line as shown on the official territory maps, and (iv) that Codington has been serving a farm home site since the late 1970s that lies at least partially north of the half quarter section land line, the Commission voted unanimously to find and declare that the boundary between NWE and Codington in Section 3 is located on the half quarter section line of the NE $\frac{1}{4}$  and southern boundary line of Government Lots 1 and 2 and that Codington should be granted a service rights exception for the customer it is currently serving to the extent that such service lies with the territory of NWE. It is therefore

ORDERED, that the boundary line between NorthWestern Energy and Codington-Clark Electric Cooperative in Section 3, T116N, R52W, Codington County is located on the southern boundary of Government Lot 1 and Government Lot 2 of such section and that NorthWestern Energy's territory in such section consists of 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. It is further

ORDERED, that Codington is granted a service rights exception to continue service to the customer it is currently serving to the extent that such service lies with the above described territory assigned to NWE.

Dated at Pierre, South Dakota, this 17<sup>th</sup> day of August, 2012.

<b>CERTIFICATE OF SERVICE</b>	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically.	
By:	<u>Joy Laboy</u>
Date:	<u>August 17, 2012</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Chris Nelson

CHRIS NELSON, Chairman

Kristie Fiegen

KRISTIE FIEGEN, Commissioner

Gary Hanson

GARY HANSON, Commissioner