

**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 DBA)
NORTHWESTERN ENERGY)**

**DECLARATORY RULING
REGARDING TERRITORY
BOUNDARY**

EL13-004

On February 14, 2013, the South Dakota Public Utilities Commission (Commission) received a Petition for Declaratory Ruling (Petition) from Charles Mix Electric Association, Inc. (CME) requesting a declaratory ruling regarding the electric service territory boundary between CME and NorthWestern Corporation d/b/a NorthWestern Energy (NWE) in a newly annexed area in Platte, South Dakota.

On February 21, 2013, the Commission electronically transmitted notice of the filing and the intervention deadline of March 8, 2013, to interested individuals and entities on the Commission's PUC Weekly Filings electronic listserv. No petitions to intervene or comments were filed. On March 7, 2013, NWE filed its Response to Petition for Declaratory Ruling. On March 29, 2013, CME filed an Affidavit of Brett Kennedy. On April 4, 2013, CME filed a Motion and Application for Evidential Hearing. On April 15, 2013, CME filed Petitioner's Withdrawal of Motion and Application for Evidential Hearing. On April 19, the Commission's Staff (Staff) filed a letter containing Staff's recommendations in the matter. The Commission finds that it has jurisdiction over the matter pursuant to SDCL 49-34A, specifically, 49-34A-42 through 49-34A-44 and 49-34A-59, SDCL 1-26-15, and ARSD 20:10:01:34 and 20:10:01:35.

At its regularly scheduled meeting on April 23, 2013, the Commission considered this matter. CME asserted that the north-south boundary between CME and NWE in the Southwest Quarter of the Northeast Quarter of Section 23 of T99N, R68W, Charles Mix County, lies at the 1/16th north-south line, while NWE argued it lies at the 1/64th line. The parties stipulated to the admission of all exhibits as evidence in the docket. Staff recommended that the boundary be determined to be at the 1/64th line, but commented that a number of factors were not considered in formulating its recommendation that the Commission may want to consider. In response to a question from Commissioner Nelson, CME stated that, should the Commission rule in favor of CME, CME would compensate NWE for its facilities currently constructed in the disputed territory.

A majority of the Commission found that their own measurements indicated that the line on the official territory map lay at the midpoint between the 1/16th line and the 1/64th line, and both CME and NWE indicated a ruling placing the boundary at that midpoint would not be satisfactory because it would split the subdivision currently under development in two. The Commission majority then determined the boundary to be at the 1/16th line, acknowledging the fact that at no other location in Charles Mix County did the boundary between the two companies deviate from either the section lines, ¼ lines, or 1/16th lines, except in the case of following a municipal boundary. The Commission directed the parties to discuss compensation for facilities, which would be addressed by the Commission at a later date if necessary.

It is therefore

ORDERED, that the north-south boundary line between Charles Mix Electric Association, Inc. and NorthWestern Energy in the Southwest Quarter of the Northeast Quarter of Section 23 of T99N, R68W, Charles Mix County is located at the 1/16th line.

Dated at Pierre, South Dakota, this 25th day of April, 2013.

CERTIFICATE OF SERVICE

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: *Tina Douglas*

Date: 4-25-13

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Gary Hanson

GARY HANSON, Chairman

Chris Nelson

CHRIS NELSON, Commissioner

KRISTIE FIEGEN, Commissioner,
dissenting