

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.

EL12-040

NorthWestern Energy's Reply Comments

Introduction

Pursuant to South Dakota Public Utilities Commission's General Counsel's August 8 email, NorthWestern Energy provides this short reply to the comments filed by other commentors in this docket. NorthWestern Energy's reply comments are intended to assist the Commission and the parties in understanding what NorthWestern Energy believes are the determinative points in resolving its Petition for a Declaratory Ruling.

The Commission must follow standard surveying practices to determine service territory boundaries.

NorthWestern Energy's service territory is determined by landlines.¹ If the service territory boundary deviates from a landline, those deviations are noted and described and filed with the Commission.² NorthWestern Energy's Petition described how the townships were originally surveyed. When creating the original township plats, the townships were surveyed from east to west and from south to north; and any surveying errors were placed in the northern and western tiers of sections.³ If these surveying practices are not followed, there is no reliability in surveying.

¹ Gogolin Aff. ¶¶ 3 & 4.

² Mr. Gogolin attached two examples to his affidavit to show how deviations are noted.

³ Pet'n at 4.

Following these principles, it is NorthWestern Energy's position that its service territory boundaries follow the landlines as submitted in its Petition. Exhibit B to NorthWestern Energy's Petition is a copy of the original plat of the township at issue, and page two of that exhibit is an enlargement of Section 3 of that township, which is the section at issue. That enlargement shows the original identification of the landlines. There is no deviation on file with the Commission from those landlines. Therefore, the service territory boundary at issue must be synonymous with the landline, and the Commission should adopt NorthWestern Energy's requested service territory boundary description. Importantly, Staff, which is a disinterested party in this proceeding, agrees that service territory boundaries most often follow established landlines⁴ and agrees with NorthWestern Energy's proposed service territory boundary.

Codington-Clark's and the City of Watertown's arguments do not warrant a different result.

In the Resistance of Codington-Clark Electric Cooperative to Petition, Codington Clark states that it services a home site which would be in NorthWestern Energy's service territory if the Commission agrees with NorthWestern Energy and with Staff. NorthWestern Energy agrees. However, NorthWestern Energy supports Codington-Clark's continuing to be the service provider to that house should the Commission adopt NorthWestern Energy's service territory description. Therefore, the location of the house is not a relevant factor here.

Codington-Clark also states that NorthWestern Energy's request comes 26 years after the Commission's preparation of service territory maps. In so doing, Codington-Clark appears to be suggesting that NorthWestern Energy somehow has raised its challenge too late. However, until the development of this recent discrepancy concerning pencil lines on a service territory map,

⁴ Commission Staff's Resp. & Recommendation on NorthWestern Energy's Pet'n for Decl. Ruling at 3 ("Staff agrees that service territory boundaries most often follow established landlines.") & 6 ("[T]he territory division was meant to follow one of the established landlines in Section 3.").

NorthWestern Energy had nothing to challenge. Pencil lines do not define a service territory boundary. Instead, because the width of a pencil line can be thick or thin, it is only representative of the boundary. The official service territory map using standard surveying practices, together with any noted deviations filed with the Commission, defines a service territory boundary. No deviations exist here on the Commission's maps, and there was nothing for NorthWestern Energy to challenge.⁵

For its part, the City of Watertown suggests that the appropriate territory line is a fence line as the natural break⁶ which it states corresponds to the "1/8th of the mile line." However, the location of moveable object like a fence does not establish an official service territory boundary. A fence simply temporarily designates how a land owner wants to use different parts of his or her land, i.e., crops or livestock. Such a personal and movable preference cannot be the basis for establishing a service territory boundary, and it is not and cannot be an established surveying tool.

Similarly, there is no such "1/8th of a mile line" in standard surveying principles. That is because a section cannot be divided into eight equal tracts.⁷ A section can be divided into halves. It can also be divided into quarters, sixteenths, or sixty-fourths because each of these units are equal squares.⁸ However, there is no such thing as a "1/8th of a mile line" because a section cannot be divided into 8 equal squares.⁹

Moreover, the City of Watertown has calculated its proposed service territory by measuring from the northern boundary of the township, which is contrary to standard surveying practices.

⁵ Moreover, as the Staff's comments well demonstrate, there were two maps in this case. They vary slightly with respect to the boundaries of the service territory at issue here.

⁶ Letter dated August 3, 2012, from Mr. Todd Chambers, Director of Operations, Watertown Municipal Utilities, to Ms. Patty Van Gerpen, Executive Director, Public Utilities Commission ("Again we do believe that the Territorial Map that has been used since the law was implemented shows the fence line as the natural break and territorial dividing line which is about 1/2 the Government Lot measurement.").

⁷ Second Gogolin Aff. ¶ 2.

⁸ *Id.* ¶ 3.

⁹ *Id.* ¶ 2.

This is clear from the City's map submitted on August 3, 2012. The Note on it states that "All Measurements Shown Are Measured From The Calculated NE 1/4 Corner Of Sec. 3, T116N, R52W." In addition, as depicted by the arrows, the dimensions shown on the map are all measured from the northern boundary. As stated in the Petition, surveyors work from east to west and from south to north, and any error in surveying the township is placed in the northern and western tiers.¹⁰ Therefore, not only is there no such thing as a 1/8 mile line, but the City of Watertown's measurements were not performed using accepted surveying practices.

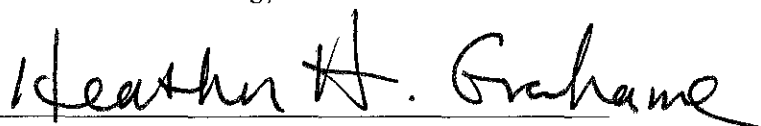
Conclusion

NorthWestern Energy asks that the Commission agree with its requested service territory description. NorthWestern Energy's position is based on well-established surveying practices, supported by Mr. Ron Gogolin, a NorthWestern Energy employee who has worked in surveying for approximately fifty years. In addition, Commission Staff agrees with NorthWestern Energy's position based on longstanding surveying practices.

Dated at Helena, Montana, this 10th day of August, 2012.

Respectfully submitted,

NorthWestern Corporation d/b/a
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¹⁰ Second Gogolin Aff. ¶ 4. See also INSTRUCTIONS TO THE SURVEYORS GENERAL OF PUBLIC LANDS at 7 (Wash. Gov't Printing Office 1871) ("The section lines are surveyed from *south* to north on true meridians, and from *east* to west, in order to throw the excesses or deficiencies in measurements on the north and west sides of the township, as required by law.").

and

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