

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

<b>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</b>	EL13-004  <b>Response to Petition for Declaratory Ruling</b>
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Charles Mix Electric Association, Inc. ("CME") filed a petition disputing the location of the electrical service territory boundary on the southwestern side of the City of Platte, South Dakota. NorthWestern Corporation d/b/a NorthWestern Energy ("NorthWestern") respectfully requests the Public Utilities Commission of the State of South Dakota ("Commission") reject CME's assertions of encroachment and confirm the service territory line in accordance with the maps established in 1975-1976.

**1. Facts and circumstances which give rise to the issue to be answered by the Commission.**

CME asks the Commission to establish the boundary separating the respective service territories of the parties within the Southwest Quarter of the Northeast Quarter of Section 23, Township 99 North, Range 68 West of the 5<sup>th</sup> P.M. in Charles Mix County. CME claims the boundary lies on a 1/16<sup>th</sup> line separating the east and west half of the land comprising the aforementioned description. NorthWestern believes the service territory boundary was established by the Commission on the 1/64<sup>th</sup> line to the west of the 1/16<sup>th</sup> line, described as the West Line of

the East Half of the Southwest Quarter of the Northeast Quarter of Section 23, Township 99 North, Range 68 West of the 5<sup>th</sup> P.M., Charles Mix County, South Dakota.<sup>1</sup>

Within the area disputed by CME is a residential development currently served by NorthWestern called the Sunset Acres subdivision (“Sunset Acres”). NorthWestern began providing electrical service to the first Sunset Acres residence in 2008 and initiated service to additional residences within the subdivision in 2012. See *Affidavit of Michael Sydow* ¶¶ 3 & 4. Although NorthWestern has served Sunset Acres for over four years, with a fourth residence currently under construction, CME now claims encroachment.

NorthWestern completed a comprehensive project identifying and mapping its service territories in the late 1990’s. *Id.* ¶ 5. A copy of NorthWestern’s current internal service territory maps for the City of Platte and the City of Geddes are attached to the *Affidavit of Michael Sydow* as Exhibit A. The 1998 map reflects NorthWestern’s determination, prior to the development of Sunset Acres, that the land was within its territory boundaries.

## 2. Argument.

### a. Reliance upon Official Maps.

In resolving this dispute, the Commission must give deference to the official territory boundary maps established pursuant to SDCL § 49-34A-44 and any service area revisions since July 1, 1976. NorthWestern is not aware of any such service area revisions since the Commission’s establishment of its Official Electric Territory Map (“Official Map”), available at <http://puc.sd.gov/energy/electricmaps/default.aspx>.

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<sup>1</sup> For clarification, this line extends south along the West Line of the East Half in the Northwest Quarter of the Southeast Quarter of such section.

CME relies upon a signed agreement between the parties dated December 22, 1975, attached to its Petition as *Exhibit 1*, for the assertion that the disputed service territory boundary is “indistinct.” The map relied upon by CME appears similar, but not identical to the Official Map. While acknowledging the lack of clarity on CME’s *Exhibit 1* when observed as presented, a close review of the drawing suggests an extension of the territory boundary to the west of the 1/16<sup>th</sup> line. Enlarging the Platte territory utilizing the Official Map similarly supports the extension of the NorthWestern service territory to the west of the 1/16<sup>th</sup> line at the 1/64<sup>th</sup> line. See *Exhibit B* (attached). In adjoining Section 24, NorthWestern’s territory is established at the 1/16<sup>th</sup> line. Both the Official Map and CME’s *Exhibit 1* suggest a larger territory assignment to NorthWestern in Section 23 than that asserted by CME, and the 1/64<sup>th</sup> line is the appropriate boundary line.

b. CME’s Asserted “Anomaly.”

CME bases its claim primarily on the argument that the two utilities never used less than 1/16<sup>th</sup> lines to establish boundaries in Platte and Charles Mix County and this “anomaly” supports resolution of the matter in its favor. This argument is simple conjecture and is not dispositive of CME’s dispute. CME does not argue a 1/64<sup>th</sup> line is inappropriate for service territory boundaries. As is apparent on the eastern side of the City of Geddes, 1/64<sup>th</sup> lines were established by the Commission as territory boundaries within Charles Mix County. See *Exhibit A and the Official Map*.

c. Reliance Upon NorthWestern’s Internal Maps.

CME also supports its territory claim by attaching to its Petition, as *Exhibit 5*, a NorthWestern Public Service map dated May 29, 1979. However, this 1979 map is not the Official Map. Instead, it appears to be one of NorthWestern’s internal drawings which are utilized to aid employees during the performance of operations. While arguably indicative of a lack of clarity

within NorthWestern in 1979 as to the exact location of the boundary, the 1979 map is not dispositive of the issue in this matter. NorthWestern's 1998 drawing, prepared prior to the development of Sunset Acres and with the assistance of better technology, more accurately tracks the territory assignment established by the Official Map.

3. **Conclusion.**

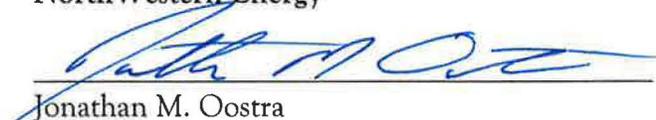
For the reasons set forth herein, NorthWestern respectfully requests that the Commission give proper deference to the Official Map, reject CME's territory claim and assertion of encroachment, and establish the boundary on the West Line of the East Half of the Southwest Quarter of the Northeast Quarter of Section 23, Township 99 North, Range 68 West of the 5<sup>th</sup> P.M. in Charles Mix County.

NorthWestern reserves the right to supplement this filing with additional documentation.

Dated at Sioux Falls, South Dakota, this 7th day of March, 2013.

Respectfully submitted,

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