

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Nodak Electric Cooperative,  
Inc.  
Complainant,

Case No. PU-20-356

vs.

Otter Tail Power Company,  
Respondent.

Volumes I and II

**TRANSCRIPT OF HEARING**

DATE: April 16, 2021

PLACE: Public Service Commission Hearing Room  
State Capitol  
Bismarck, North Dakota

A P P E A R A N C E S

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Randy Christmann  
Brian Kroshus

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1           ALJ DAWSON:  -- upon the request of the Public  
2 Service Commission to serve as the hearing officer for  
3 this hearing.  This is North Dakota Public Service  
4 Commission Case No. PU-20-356.  Okay.

5           Okay.  I should check with him before I begin  
6 but I just started.

7           This is a hearing on the July 29, 2020,  
8 complaint filed by Nodak Electric Cooperative, Inc.,  
9 against Otter Tail Power Company for threatening to  
10 extend Otter Tail's system to serve a customer at a  
11 certain location in Pembina County, North Dakota,  
12 without first obtaining a certificate from the  
13 Commission that public convenience and necessity require  
14 an extension of service.  The location was recently  
15 annexed into the corporate city limits of Drayton.  In  
16 addition, Nodak alleges this system extension by Otter  
17 Tail would interfere with Nodak's system and would be a  
18 wasteful duplication of facilities.

19           On December 11th, 2020, Otter Tail filed a  
20 motion to dismiss stating the Commission lacks the  
21 authority to grant the relief requested by Nodak.

22           Let the record show that it is April 16th, 2021,  
23 and it's a little past 8:30 a.m..  This hearing is being  
24 held in the Public Service Commission hearing room in  
25 the State Capitol, Bismarck, North Dakota.  This is the

1 time, date, and place set by the notice of hearing  
2 issued by the North Dakota Public Service Commission on  
3 March 3rd, 2021.

4 The issues to be considered are:

5 One, whether the Commission should grant Otter  
6 Tail's motion to dismiss;

7 Number two, whether Otter Tail's extension would  
8 interfere with existing services provided by Nodak;

9 And, number three, if there would be a  
10 duplication of services, whether the duplication of  
11 services would be unreasonable.

12 We will now have the parties make their  
13 appearances.

14 Ms. Radermacher.

15 MS. RADERMACHER: Yes, Your Honor. Kimberly  
16 Radermacher representing Nodak. With me at counsel's  
17 table is Mylo Einarson, the president and CEO of Nodak.  
18 Also with me is Steven Breidenbach, engineering manager  
19 from Nodak Electric. And behind me is Counsel Andrew  
20 Sorbo. He represents Minnkota as well as Nodak.

21 I will be arguing on behalf of Nodak today.

22 ALJ DAWSON: Okay. Mr. Sanderson.

23 MR. SANDERSON: Good morning, Judge,  
24 commissioners. My name is Paul Sanderson. I'm with the  
25 Evenson Sanderson Law Firm in Bismarck. I represent the

1 Respondent, Otter Tail Power Company, in this case.  
2 With me at counsel table is Otter Tail's new associate  
3 General Counsel Bob Endris. Behind me at the table is  
4 Tyler Jacobson, senior area engineer, and also Jeremy  
5 Rham, area manager for Otter Tail Power.

6 ALJ DAWSON: Mr. Olson, is he in the room here  
7 today? Do I have the right name? The mayor of Drayton?

8 MR. SANDERSON: No. Mr. Olson will be called as  
9 a witness via teleconference during the hearing --  
10 during Otter Tail's case in chief.

11 ALJ DAWSON: So his plan is not to participate  
12 as counsel would participate in this hearing?

13 MR. SANDERSON: That is my understanding, Judge.  
14 Thank you.

15 ALJ DAWSON: And for advisory staff,  
16 Mr. Johnson.

17 MR. JOHNSON: Brian Johnson, PSC.

18 ALJ DAWSON: Okay. Is there anyone else in this  
19 room? I'll pass out a sign-in sheet to get the people  
20 that are sitting in the wings. We'll have public  
21 testimony at the end of the hearing. It will be  
22 allowed. If you have any questions about providing  
23 information to the Commission, please talk to me during  
24 a break and we will answer those questions for you.

25 It's now time for opening comments by the

1 commissioners.

2 Commissioner Kroshus.

3 COMMISSIONER KROSHUS: Good morning, everyone.  
4 I'll keep this brief. On one hand, it's good to see  
5 everyone in the same room. After a 12-month period of  
6 the pandemic, we're finally starting to come together.  
7 Obviously, it would be better to have everyone in the  
8 same room under a little bit better circumstances, but I  
9 look forward to hearing the information. And I've got  
10 some questions that I suspect will be answered along the  
11 way and then can use that information to make a good  
12 decision in the end, hopefully.

13 So thank you for being here. And with that,  
14 I'll turn it over to my colleagues.

15 ALJ DAWSON: Commissioner Fedorchak.

16 COMMISSIONER FEDORCHAK: Good morning,  
17 everybody. Thanks for being here. I think that the  
18 parties have done a nice job laying everything out in a  
19 clear way. I'm looking forward to a good discussion  
20 this morning and getting through the hearing in a fairly  
21 efficient manner and, hopefully, reaching a decision  
22 quickly as well. Thank you.

23 ALJ DAWSON: Commissioner Christmann.

24 COMMISSIONER CHRISTMANN: Good morning. Nothing  
25 to add to that. Pretty well all said and ready to get

1 started here.

2 ALJ DAWSON: Are there any preliminary matters  
3 or motions?

4 Ms. Radermacher.

5 MS. RADERMACHER: Just by way of housekeeping,  
6 obviously this is an interesting case just from the  
7 perspective that we brought the complaints, we're the  
8 complainant. However, there are also the -- there are  
9 movements on a motion to dismiss, so just a matter of  
10 how the Commission wants to take the matters up this  
11 morning, if the motion to dismiss is going to be argued  
12 prior to or we're going to just do it as part of the  
13 whole case.

14 And then Mr. Sanderson and I did stipulate to a  
15 number of things prior to the hearing. One, that we  
16 agree that there is sufficient foundation for each  
17 other's exhibits as proposed. The other issue being  
18 that the witnesses may bring materials up to the stand  
19 to assist in testimony.

20 ALJ DAWSON: Certainly. Well, we'll start at  
21 the end and work backwards.

22 The exhibits are marked Nodak 1 through Nodak 10  
23 and OTP 1 through OTP 4, and they're so marked and  
24 admitted.

25 MS. RADERMACHER: Your Honor, there was a

1 late-filed exhibit that I included at the back of the  
2 packet that's Nodak 11.

3 ALJ DAWSON: Okay.

4 MS. RADERMACHER: I apologize. It did not make  
5 it on my cover sheet.

6 ALJ DAWSON: Okay. Nodak 11 as well. And then  
7 we will talk about the order of events here today,  
8 unless do you want to add in anything, Mr. Sanderson?

9 MR. SANDERSON: No, I --

10 ALJ DAWSON: I thought about this ahead of time  
11 and so I have my answer but --

12 MR. SANDERSON: No. I would just put on the  
13 record that we agree to the stipulation of Nodak  
14 Exhibits 1 through 11 and Otter Tail's Exhibits 1  
15 through 4. And I will just ask, I did bring hard copies  
16 if the commissioners need them or I provided you one,  
17 Judge, but if you need them, I can certainly pass them  
18 out.

19 ALJ DAWSON: Okay. Does anyone need a copy?  
20 Commissioners? Okay.

21 MR. SANDERSON: Okay.

22 ALJ DAWSON: As to the order, I think that Otter  
23 Tail brought the motion to dismiss and the complaint was  
24 filed by Nodak, but as an evidentiary hearing, I think  
25 that Nodak should go first and then deal with the motion

1 to dismiss basically as part of the evidentiary hearing  
2 at the end. I think that flows the best and makes the  
3 most sense. But I'm open to an argument contrary to  
4 that.

5 MS. RADERMACHER: I prepared that way, Your  
6 Honor, so I'm fine with that.

7 ALJ DAWSON: Perfect.

8 MS. RADERMACHER: I just wanted to make sure  
9 just because, like you said, there's some nuances to  
10 this --

11 ALJ DAWSON: Correct.

12 MS. RADERMACHER: -- that make it interesting so  
13 I just wanted to verify.

14 ALJ DAWSON: Well, then you may call your first  
15 witness or make an opening remark.

16 MS. RADERMACHER: Well, Your Honor, I want to  
17 keep it brief, the opening statements, as --

18 Oh, is it on?

19 UNIDENTIFIED SPEAKER: It is now.

20 MS. RADERMACHER: Wonderful.

21 As Chairman Fedorchak mentioned, you know, I  
22 think that the parties have properly laid out and  
23 thoroughly laid out kind of the positions of the parties  
24 in this action.

25 This initially started off as a complaint under

1 the Territory Integrity Act, essentially alleging that  
2 we had the service area that the proposed Love's Truck  
3 Stop was set to be built at. And when I say that, Nodak  
4 Electric. And so it's our position that it was -- it's  
5 in our service territory. We're entitled to serve it.

6 At one point an annexation occurred bringing  
7 that property inside the city limits of Drayton. At  
8 that point in time, Otter Tail had a franchise to serve  
9 and -- I apologize.

10 COMMISSIONER FEDORCHAK: Judge, could you ask  
11 them to have their mics off if they're listening in?

12 ALJ DAWSON: Please turn off your mics if you're  
13 viewing this by alternative means.

14 Continue.

15 MS. RADERMACHER: Thank you.

16 And so, ultimately, they had a franchise to  
17 serve the load after the annexation occurred, and so  
18 Otter Tail at that point proceeded as though they were  
19 serving the load, and that was when the complaint was  
20 filed. Subsequently, there was a motion to dismiss  
21 filed indicating that the PSC doesn't have jurisdiction  
22 over this matter.

23 Nodak would strongly disagree. We believe that  
24 the statutes provide the -- a means by which the PSC  
25 could step into this matter. We have set that forth in

1 our arguments and indicating that, under Statute 49-03,  
2 that particular chapter, there are provisions in which  
3 the PSC can step in and, essentially, govern this matter  
4 and indicate whether or not in this situation there's  
5 been wasteful -- or if there is a duplication of  
6 services, whether those are unreasonable and wasteful,  
7 also, whether or not they would interfere with our  
8 existing plant that's currently at the location. It is  
9 our argument that those two things will be met today and  
10 that we'll have evidence to show that.

11 And so we are asking, essentially, for the court  
12 to -- I mean, excuse me, the PSC to enjoin them from  
13 proceeding with providing electricity and at that point  
14 allowing Nodak to serve.

15 ALJ DAWSON: Mr. Sanderson, would you like to  
16 make your opening remarks now or before your case?

17 MR. SANDERSON: Thank you, Judge. I'd like to  
18 make my opening statements now to the Commission.

19 ALJ DAWSON: Okay.

20 MR. SANDERSON: Good morning, Commissioners.  
21 Again, my name is Paul Sanderson. I'm here on behalf of  
22 Otter Tail Power. Otter Tail Power Company is  
23 respectfully requesting that the Commission grant its  
24 motion to dismiss in this case.

25 We're here simply for one reason. Nodak

1 Electric Cooperative approached the City of Drayton,  
2 requested a franchise, and the City denied that request.  
3 The property at issue in this case is located within the  
4 city limits. Otter Tail has the only franchise granted  
5 by the city. And because Nodak -- because the city  
6 would not give Nodak a franchise, they're here, in  
7 essence, asking you to grant them a franchise to serve  
8 the city of Drayton.

9 And as part of our motion to dismiss, we  
10 respectfully indicate to the Commission that you lack  
11 authority to grant -- to invalidate the lawful franchise  
12 granted by the City of Drayton and issue a franchise to  
13 Nodak and, in essence, grant them a de facto franchise  
14 to serve.

15 Now, the controlling legal precedent is clear.  
16 There's a North Dakota Constitutional Amendment,  
17 Article VII, Section 11, which provides verbatim:

18 "The power of a governing board of a city to  
19 franchise the construction and operation of  
20 any public utility or similar service within  
21 the city shall not be abridged by the  
22 legislative assembly."

23 And again, this commission, your power is only  
24 granted to you by the legislative assembly.

25 And so in addition to that, though, the North

1 Dakota legislature also granted cities the power to  
2 exercise franchises also under North Dakota Century Code  
3 Section 40-05-01. So under North Dakota law, this  
4 commission lacks authority to grant Nodak's request to  
5 invalidate a lawful franchise issued by the City of  
6 Drayton to Otter Tail and to, in essence, grant a de  
7 facto franchise to Nodak. And that's what they're  
8 requesting in this case.

9 The facts -- the critical facts in this case are  
10 undisputed. The property at issue is called McFarland's  
11 Addition. There are no existing customers on that  
12 property nor has either Nodak or Otter Tail provided any  
13 service to those customers. That property is located  
14 within the city limits of the city of Drayton. It was  
15 annexed in in August of 2019.

16 Otter Tail possesses a valid franchise which  
17 obligates them under the law to provide service to that  
18 location. Nodak does not possess a franchise to serve  
19 within the city limits of the city of Drayton. And,  
20 again, they requested a franchise and they were denied  
21 by the city.

22 And finally, the last critical fact for purposes  
23 of this case and which will be established today is the  
24 city adopted a resolution granting Otter Tail the right  
25 to serve the new Love's Truck Stop. They made the

1 determination clear and indicated pursuant to their  
2 constitutional right that Nodak -- or that Otter Tail  
3 has the right to do that.

4 Now, Nodak commenced this case alleging a  
5 violation of Chapter 49-03, the Electric Utilities  
6 Franchise Act. But the critical provision in that act  
7 for purposes of this case is 49-03-06.8, which provides:

8 "Nothing in this chapter shall be construed  
9 to limit the authority of a governing board  
10 of a city to exercise its franchise  
11 authority under 49-05-01."

12 So the chapter they're relying on asking you to  
13 invalidate a franchise has a provision in it that says  
14 you do not possess the power to do that. And more  
15 importantly, nowhere in their complaint and, again, in  
16 their response to our motion to dismiss have they  
17 provided this Commission with any legal authority that  
18 grants you the right to invalidate a lawful franchise by  
19 the city.

20 Now, what's interesting is this is not a new  
21 issue. This exact issue was decided by the North Dakota  
22 Supreme Court in the early 1970s over a dispute that's  
23 factually similar in the city of Crosby. And in that  
24 case, Divide County School District was going to build a  
25 new high school just outside the Crosby city limits.

1 Now, in that case, actually, the customer, the school  
2 district, contracted with the co-op to provide service,  
3 and before the property was annexed in, the co-op went  
4 out and constructed a yard light and was actually  
5 serving the property, which actually makes it  
6 distinguishable, factually distinguishable a bit.

7 But that case, that dispute, went to the North  
8 Dakota Supreme Court. And the courts concluded that  
9 when a person or customer resides in city limits, and  
10 that's -- that is receiving central station service  
11 pursuant to a franchise of the city, the co-op cannot  
12 serve that customer unless they have a valid franchise.  
13 And that same issue was affirmed, that holding was  
14 affirmed in the recent Boulder Ridge case here in  
15 Bismarck. But the Crosby case, the court said that the  
16 co-op's right to furnish electricity to a customer on  
17 property ceases when that property became annexed into  
18 the city of Crosby. And that's the holding. We have a  
19 case directly on point that has addressed these exact  
20 legal issues.

21 So the other thing you're going to hear a lot  
22 about from the city -- or, excuse me -- from Nodak is a  
23 1968 service area agreement that was entered into  
24 between Nodak and Otter Tail. And they're arguing that  
25 that service area agreement between the two parties

1 gives the Commission the authority to, in essence, grant  
2 Nodak a franchise, to invalidate the City of Drayton's  
3 lawful franchise and grant them franchise. And I'll  
4 represent to you nothing in that service agreement  
5 bestows that power on the Commission. And it's very  
6 important to note that the City of Drayton is not party  
7 to that service agreement nor can it be stated that they  
8 are legally bound by the terms of an agreement that  
9 they're not party to.

10 But more importantly than that, the North Dakota  
11 Legislature did give this commission the power to  
12 regulate service area agreements in 2005 with the  
13 enactment of North Dakota Century Code Section 49-03-06.  
14 But under that law, for this commission to enforce a  
15 service area agreement, that agreement is only valid and  
16 enforceable if it has been filed with this commission  
17 and this commission has made the determination that that  
18 service agreement complies with the law and is in the  
19 public's best interest. At no time since the enactment  
20 of that law has Nodak filed the service area agreement  
21 that is at issue.

22 But again, and most importantly, with that new  
23 service area agreement law that was enacted in 2005, the  
24 North Dakota legislature included the provision:

25 "Nothing in this chapter shall be construed

1           to limit the authority of a governing board  
2           of a city to exercise its franchise  
3           authority."

4           And that's what we're doing. That's what  
5 they're attempting to do.

6           Now, there's three issues as the judge indicated  
7 in this case. First, whether the motion to dismiss  
8 should be granted. And our position is that is strictly  
9 a legal argument and the law dictates that the  
10 Commission does not have the authority to invalidate a  
11 lawful franchise issued by the City of Drayton and grant  
12 Nodak a franchise to serve in the city of Drayton when  
13 the city has not granted Nodak that franchise.

14           The other two issues -- well, and in response to  
15 that, we will be calling four witnesses here today.  
16 Mayor Chip Olson -- excuse me -- Mayor Charles "Chip"  
17 Olson from the city of Drayton will testify via  
18 teleconference. He will set forth those facts.

19           In addition, you'll hear from Steve Walters, the  
20 project manager of the Love's Travel Stop, to give you  
21 the time frame and some of the details about the  
22 negotiations and why that property was annexed.

23           You will hear live and in person from Tyler  
24 Jacobson, Otter Tail senior area engineer, about that --  
25 about the service and getting to the other two issues,

1 and then Chris Waltz, Otter Tail's manager of sales and  
2 economic development. Unfortunately, he's been a little  
3 under the weather so he's going to appear via  
4 teleconference here today but we intend to call him.

5 But one of the things you'll see, as been  
6 identified in Nodak's 11 exhibits that they've  
7 submitted, they're treating this as a Territorial  
8 Integrity Act case. And that is not what this case is.  
9 I'm not going to object to the relevance, but I'll just  
10 put on the record right now. The exhibits they're going  
11 to offer have no relevance to the issues that need to be  
12 decided. This is not a Territorial Integrity Act case.

13 In a TIA case, the situation is when a public  
14 utility is going outside the city limits of the city and  
15 attempting to serve a customer outside city limits.  
16 This case is the exact opposite. This is a case where  
17 Nodak is attempting to come into city limits and serve a  
18 customer when they have no franchise.

19 So I just represent to the Commission that the  
20 exhibits in evidence that Nodak intends to offer are not  
21 relevant to the issues that need to be determined. The  
22 evidence that we'll be presenting will show that Otter  
23 Tail's extension of service to Love's to serve pursuant  
24 to their franchise and lawful obligation will not  
25 interfere with any existing services provided by Nodak

1 because Nodak does not serve any customers within that  
2 property.

3 And also, to issue three, there will not be,  
4 again, an unreasonable duplication of services because,  
5 again, Nodak does not provide any electric service to  
6 any customers within the property that we're dealing  
7 with.

8 So for those reasons, we respectfully request  
9 that the Commission grant our motion to dismiss in this  
10 case for those reasons, and we look forward to  
11 presenting our evidence in this case. Thank you.

12 ALJ DAWSON: Ms. Radermacher, are you ready to  
13 call your witness?

14 MS. RADERMACHER: I am, Your Honor.

15 COMMISSIONER CHRISTMANN: Your Honor?

16 ALJ DAWSON: Yes? Commissioner Christmann.

17 COMMISSIONER CHRISTMANN: Regarding the  
18 exhibits, I just double-checked after Mr. Sanderson  
19 talked about his four exhibits and whether we needed  
20 copies. I think I have them but they're labeled 1-A, B,  
21 C. Are things distributed that way and A, B, C should  
22 be 2, 3, and 4?

23 MR. SANDERSON: If I may approach, Commissioner,  
24 I can certainly hand you a hard copy of our exhibits  
25 just for ease to the Commission.

1 ALJ DAWSON: You may.

2 MR. SANDERSON: Okay.

3 ALJ DAWSON: I think you're looking at the  
4 motion. The exhibits attached --

5 MR. SANDERSON: Oh, to the affidavit? Yeah, the  
6 exhibits we're offering at the hearing are numbered  
7 different than are attached to the affidavit.

8 COMMISSIONER CHRISTMANN: Then I would like  
9 them. Thank you.

10 ALJ DAWSON: You may call your first witness.

11 MS. RADERMACHER: Thank you, Your Honor. I  
12 would call Steve Breidenbach.

13 ALJ DAWSON: Mr. Breidenbach, I'm required by  
14 law to tell you the penalties for perjury in this state.  
15 Perjury is a Class C felony punishable by a fine of up  
16 to \$10,000 or a term of imprisonment of up to five years  
17 or both.

18 Do you understand what perjury is and the  
19 penalties for it?

20 MR. BREIDENBACH: Yes.

21 ALJ DAWSON: Understanding so, do you promise or  
22 swear that the testimony that you're about to give will  
23 be the truth, the whole truth, and nothing but the  
24 truth?

25 MR. BREIDENBACH: (No audible response.)

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ALJ DAWSON: You may begin.

**STEVE BREIDENBACH,**

being first duly sworn, was examined and testified as follows:

ALJ DAWSON: Turn on your microphone, please.

DIRECT EXAMINATION

BY MS. RADERMACHER:

Q. Mr. Breidenbach, can you please state your full name for the record?

A. My name is Steve, Steve Breidenbach.

Q. And can you spell your last name for the record?

A. It's B-R-E-I-D-E-N-B-A-C-H.

Q. And what is your current occupation?

A. I'm the engineering manager at Nodak Electric.

Q. And how long have you been in that position?

A. I've been in that position for about 11 years.

Q. And prior to the position as engineering manager, have you held any other positions with Nodak Electric?

A. Yes, I have. I was a member service representative, a planning engineer, and a systems engineer.

Q. Okay. And how long approximately have you worked for Nodak Electric?

A. I've worked for Nodak about 41 years.

1 Q. And did you hold any prior positions with any  
2 other entity in an engineering capacity prior to your  
3 work with Nodak?

4 A. No.

5 Q. And what is your educational background?

6 A. I have an associate's of applied science degree  
7 in electrical technology from North Dakota State College  
8 of Science and I have a bachelor of science degree in  
9 electrical engineering from UND.

10 Q. Okay. And as an electrical engineer, are you  
11 required to obtain any certifications?

12 A. No. My position doesn't require a professional  
13 engineering certificate.

14 Q. Okay. And is that because you're in kind of the  
15 private sector and not in the public sector?

16 A. Very possibly, yeah. I'm not sure what the  
17 public sector would require. But correct.

18 Q. Okay. And are you required at all to take any  
19 sort of continuing education relative to your current  
20 position?

21 A. Not required to, but I do annually take  
22 continuing education credits for about 24 points per  
23 year.

24 Q. Okay. And can you just kind of briefly describe  
25 to me and the Commission what your -- kind of your

1 duties are at Nodak Electric as engineering manager?

2 A. Yes. I supervise the engineering department,  
3 our dispatch center, our metering department;  
4 responsible for construction specs, new service  
5 connects, system planning; and also help develop  
6 policies of the cooperative.

7 Q. Okay. And when you say new service connects,  
8 does that relate also to new line extensions to,  
9 potentially, new loads?

10 A. Correct. Yes.

11 Q. And do you recall in approximately February  
12 of 2019 Nodak Electric being approached by Love's or an  
13 agent on behalf of Love's Truck Stop and a proposed site  
14 near Drayton, North Dakota?

15 A. Yes. I believe it was their construction  
16 engineers. CEI, I believe the name.

17 Q. Okay. And at the time of the initial contact,  
18 what was essentially the conversation that had taken  
19 place? Do you recall?

20 A. The engineers asked if it was our service area,  
21 and we felt it was, and they asked for construction  
22 costs, they were asking about.

23 Q. Okay. And at some point during your discussions  
24 with them, were you able to -- so you had an initial  
25 contact. Were there some contacts that kind of took

1 place in the next couple of months after that relative  
2 to siting?

3 A. Uh-huh.

4 Q. Okay. And did you request a copy of their  
5 siting plan?

6 A. Yes. We didn't know where they would want power  
7 on the property, so we asked for a site plan indicating  
8 such.

9 Q. Okay. And a site plan kind of gives you a  
10 roadmap on where you might bring in electrical services.  
11 Is that accurate?

12 A. Correct. Yes.

13 Q. Okay. And did somebody from CEI or Love's  
14 ultimately provide you a copy of the site plan?

15 A. Yes, they did.

16 Q. Okay. And as part of preparation in this case,  
17 did you provide my office a copy of that site plan?

18 A. Yes, I did.

19 MS. RADERMACHER: May I approach, Your Honor?

20 ALJ DAWSON: You may.

21 Q. I've handed you what's been labeled as Nodak 1.  
22 Is that the site plan that you received from CEI?

23 A. Yes, I did.

24 MS. RADERMACHER: And it's my understanding that  
25 the ALJ has already admitted that into evidence?

1 ALJ DAWSON: Correct.

2 MS. RADERMACHER: Thank you.

3 Q. Now, based on that site plan, where -- is there  
4 a transformer pad that's outlined on that site plan?

5 A. Yes, there is. It's in a -- what I believe to  
6 be a concreted area just on the southwest corner of the  
7 building going up.

8 Q. Okay. And that would be where the logical  
9 extension of service would connect to, I'm assuming?

10 A. Correct.

11 Q. Okay. And so based on that plan, did you  
12 ultimately draw up a plan of how you would extend  
13 service to this site?

14 A. Yes, I did.

15 MS. RADERMACHER: May I approach, Your Honor?

16 ALJ DAWSON: Yes, you may.

17 Q. I've handed you what's been labeled as Nodak 2.  
18 Is that the site plan that you drafted -- or excuse  
19 me -- is that the map that you created as a result of  
20 the site plan and how you would extend service?

21 A. Correct. Yes, it is.

22 MS. RADERMACHER: So it would be Exhibit 2.

23 Q. So I'll kind of have you refer up to the screen  
24 if you would, Mr. Breidenbach, just so that the  
25 Commission can see. I think it's a little more clear.

1           So the area that's outlined in green, can you  
2 tell me what that area is?

3           A. That's the Love's property.

4           Q. Okay. And is that the entire outlot that was  
5 purchased as part of their -- in contemplation of where  
6 they were going to put their store?

7           A. I believe so. Yes.

8           Q. Okay. And the red line, what is that?

9           A. The red lines are all our underground facilities  
10 crossing that property. And we also have underground  
11 facilities on the -- it would be the top or the west  
12 side of 160 Avenue Northeast.

13          Q. Okay. And so the orientation is a little off in  
14 this picture just because it's flipped sideways, but is  
15 it my understanding it would be to the west that's  
16 facing to the top of the screen and north is actually  
17 facing off to the right of the screen?

18          A. Correct.

19          Q. Okay.

20          A. And the yellow line would be the proposed  
21 construction to the transformer location at -- on the  
22 Love's property.

23          Q. Okay. And is there currently a three-phase  
24 service that's located where the beginning of the yellow  
25 line starts?

1           A.   Yes, there is.

2           Q.   Okay.  And then the line that actually goes  
3 right through the Love's property, what kind of service  
4 is that?

5           A.   That's a single-phase line.

6           Q.   And approximately how long has that line been on  
7 that property?

8           A.   We've had line in general on that whole property  
9 since almost 1950.  It started out as an overhead line.  
10 There was a farmstead in the approximate location.  And  
11 subsequent years later, we converted it to underground.  
12 And in 2009 we replowed and increased the capacity of  
13 the line.  We still have one aught line going through  
14 the property and we have three-phase going north and  
15 south along the property serving -- you can see it's  
16 kind of a bin site, a former -- a former seed plant that  
17 we serve now.

18          Q.   Okay.  And is that Interstate 29 that I see also  
19 predominantly in the picture with the off ramps --

20          A.   Correct.

21          Q.   -- off and on ramps?

22                Okay.  And to the south -- or excuse me, it  
23 would be to, essentially, the east of that or the bottom  
24 of the screen, is that where the primary -- how do I  
25 want to say it? -- limits of the city are?

1 A. Yes.

2 Q. Okay. So the majority of the city of Drayton  
3 actually lies to the -- is it the east side then of  
4 Interstate 29?

5 A. I-29, correct.

6 Q. Okay. And what was the primary reason for  
7 extending facilities around the city of Drayton the way  
8 that Nodak has?

9 A. That was for future planning. The bin site  
10 being a large three-phase load, the area surrounding it,  
11 and we have farmsteads that utilize three-phase in the  
12 area, and we wanted to do some system improvement for  
13 system planning. And with the grain place that's  
14 currently there, we thought an expansion could be  
15 inevitable.

16 Q. Okay. And so the red line I see going over --  
17 what appears to be going over anyway Interstate 29 and  
18 then again intersecting the Love's property, is that  
19 underground or overhead?

20 A. That's all underground.

21 Q. Based on this map --

22 MS. RADERMACHER: And if we could scroll --  
23 maybe I wonder if we can't minimize this a little bit so  
24 it's not blown up quite as -- there we go.

25 Q. So based on this map now, we can see a little

1 bit more to the -- to the -- what would be the east, is  
2 that the city of Drayton, or at least the outskirts of  
3 the city of Drayton?

4 A. Yes, it is.

5 Q. And so there's additional lines that Nodak  
6 appears to have relative to the city of Drayton; is that  
7 correct?

8 A. Correct.

9 Q. Now, based on some of the lines that I'm seeing,  
10 are there facilities that are currently located there  
11 that are in the city limits of Drayton?

12 A. Yes, there are. We have -- we're joint  
13 occupancy with an overhead line that follows the off  
14 ramp of I-29 and it heads straight east following State  
15 66, I believe it is. We have an underground dip that  
16 shows going across Highway 66 and serving customers on  
17 the north side. Also a little bit further, there's a  
18 service station, a gas station, that we have an  
19 underground tap to that's, I believe, in the city limits  
20 that we also serve --

21 Q. Okay.

22 A. -- where the line is continually going east.

23 Q. And is that shown in this picture?

24 A. It's not in this picture. I think it has to --

25 MS. RADERMACHER: And I apologize. Can you

1 scroll down just a tad more?

2 Q. Okay. Is that --

3 A. Yes. There it is.

4 MS. RADERMACHER: May I approach the exhibit,  
5 Your Honor?

6 ALJ DAWSON: Yes, you may.

7 Q. So based on your understanding, are these  
8 facilities all within the city limits of the city of  
9 Drayton?

10 A. As far as I know, yes.

11 Q. And this parcel right here, is this the service  
12 station you're referring to?

13 A. Yes.

14 Q. And is this also within the city limits of  
15 Drayton?

16 A. As far as I know it is.

17 Q. Okay. And was that just recently discovered as  
18 late as last night that this was actually annexed in  
19 after Nodak was providing service?

20 A. Correct.

21 Q. And approximately how long has Nodak been  
22 providing service to that site?

23 A. I don't remember the date. It's been at least  
24 20 years.

25 Q. Okay. So about 1989, would that sound --

1 A. Yep.

2 Q. -- about right to you?

3 A. Yep.

4 Q. Okay. And do you recall when the city annexed  
5 the property into the city of Drayton?

6 A. I think that was more recent. Was that about  
7 2009? I don't have that number. I'm sorry.

8 Q. So approximately 2006, would that sound  
9 accurate --

10 A. '06. Yep, yep.

11 Q. -- or refresh your recollection?

12 Do you have a franchise to currently serve this,  
13 to your knowledge?

14 A. No, we don't.

15 Q. So you are operating your facility, though --  
16 facilities inside of this even though it's a --  
17 currently without franchise. Is that accurate to say?

18 A. That's correct.

19 Q. Okay. And again, this whole line also sits  
20 within the city of Drayton?

21 A. Yes.

22 Q. Do you have easements relative to the lines that  
23 intersect the property I was just referring to?

24 A. Yes.

25 Q. Do you also have easements for the property

1 where the Love's station is proposed to be?

2 A. Yes.

3 Q. Okay. So after your initial contact with CIE on  
4 behalf of Love's, did you ever have a chance to discuss  
5 the truck stop or -- with the truck stop or any of its  
6 agents, what the cost of Nodak -- what it would take to  
7 extend service to the site?

8 A. Yeah. With our -- with our current line  
9 extension policy, after I got the plotting, or the site  
10 plan, it was found that it's about 350 feet away from  
11 our existing line. Our policy states that 600 feet or  
12 less, there would be no upfront cost. So I relayed that  
13 to the consulting engineer. And the only question was a  
14 pad for the transformer, they'd be responsible for costs  
15 for that. If they chose to pour their own, there would  
16 be no costs.

17 Q. Okay. And so the -- so you referenced that  
18 there would be approximately 300 feet of line extension?

19 A. Yes. About 350.

20 Q. Okay. And that would be a three-phase service?

21 A. Correct.

22 Q. And is that coming off like a three-phase  
23 cabinet or any sort of service that's located up near  
24 that bin site?

25 A. Correct. Bin site service, yeah. Uh-huh.

1 Q. Okay. And so based on the policy that you said  
2 the board has passed, there would have been no cost  
3 associated whatsoever to Love's service station?

4 A. No upfront cost. We do have an annual minimum  
5 of \$2,400 a year for five years. And with the size of  
6 service they were putting in, it would easily fulfill  
7 that. So basically, they would see no additional cost  
8 for line extension.

9 Q. Okay. And did you communicate with Love's  
10 service station or any of its agents relative to what  
11 their cost associated with the construction would be?

12 A. Not to that extent. The construction engineer  
13 that we dealt with basically just told them it would be  
14 no cost so...

15 Q. Okay.

16 A. I never got a representative from Love's on the  
17 line, no.

18 Q. So in preparation of this hearing, did you end  
19 up putting together what -- because I'm assuming you had  
20 an estimate at least in your head of what the costs  
21 would be or kind of in paper to know that it fell within  
22 the policy guidelines; correct?

23 A. Correct. Yep.

24 Q. But thereafter, did you put together exactly  
25 what the cost would be at least to Nodak Electric for

1 extending that service?

2 A. Yes. We always do for an estimate when you do  
3 construction stuff, so yep.

4 Q. Okay. And did you provide my office with a copy  
5 of what that line extension would be?

6 A. Yes, I did.

7 Q. Okay.

8 MS. RADERMACHER: If I could have Nodak 3  
9 brought up, please.

10 May I approach, Your Honor?

11 ALJ DAWSON: You may.

12 MS. RADERMACHER: And, Your Honor, I did provide  
13 you with a copy of the exhibits. Do you want the  
14 originals, though, for your record subsequent to --

15 ALJ DAWSON: Please.

16 MS. RADERMACHER: Thank you.

17 Q. So I've just handed you what's been labeled as  
18 Nodak Exhibit 3. On that exhibit, is that still a true  
19 and correct copy of the numbers you provided my office?

20 A. Yes, it is.

21 Q. And has that been altered in any way since your  
22 submission?

23 A. No, it hasn't.

24 Q. Okay. So based on that exhibit, which is Nodak  
25 Exhibit 3, what would be the overall project cost for

1 extending three-phase service to the Nodak -- excuse me,  
2 to the Love's site?

3 A. I calculated about \$19,037.

4 Q. Okay. And again, I think the exhibit kind of  
5 speaks for itself, but just briefly, what would be  
6 required in order to extend service? I mean, what would  
7 the essential elements of the extension be?

8 A. Okay. It would be line trenching, new  
9 three-phase cabling, transformer, and basically the  
10 connections at each side.

11 Q. Okay. And when we were also showing the map on  
12 Exhibit 2, there shows that there's a single-phase line  
13 that's also extending or intersecting that site. Could  
14 the Love's service station logically be served off a  
15 single-phase service?

16 A. It's possible. We have customers that put phase  
17 converters in to create three-phase power and they only  
18 require single-phase to operate that. So it would be  
19 possible with the existing line on the property.

20 Q. Okay. And is a single-phase considerably less  
21 to construct than three-phase?

22 A. Yeah. I would guesstimate that that would be  
23 about six -- \$6,000 or so to construct a single-phase  
24 line to that same location.

25 Q. Okay. And is it in part because it's

1 single-phase line and also because you have less line  
2 extension?

3 A. Correct.

4 MS. RADERMACHER: Okay. Now, if we could go  
5 back to Exhibit 2, please, just momentarily. And if we  
6 could scroll -- thank you. Okay.

7 Q. So now we've got the Love's site over here. And  
8 I have an exhibit that I'll bring in later on, but just  
9 kind of to give the Commission an idea, where currently  
10 are the -- where's the closest Otter Tail service to  
11 this site?

12 A. Closest Otter Tail service to the site, I  
13 believe, is on the east side. It's kind of a brown roof  
14 building. I think that's the closest service that they  
15 would operate on that -- on that picture there.

16 Q. Okay. And so they also have some line that's  
17 going almost parallel with yours. Is that accurate?

18 A. Correct. Yeah. They have a -- they have a, I  
19 believe, a three-phase line on the south side of the  
20 property that that brown building is situated, kind of  
21 -- kind of over there. And then they have a  
22 transmission line kind of circling the area as well.

23 Q. Okay. And so they also have some transmission  
24 line to the west of interstate; is that correct?

25 A. Correct.

1 Q. But that transmission line typically would not  
2 be tapped in order to serve that load, is --

3 A. No. Generally not. Coming off a transmission  
4 line is usually quite expensive to -- to serve a single  
5 customer unless it's a large customer. And this would  
6 be a -- too small a customer.

7 Q. And would that require usually like a step-down  
8 transformer?

9 A. Yes. Yep.

10 Q. And a designated substation on the property to  
11 be able to do that?

12 A. Type of substation, yeah.

13 Q. Okay. So where is the most logical point that  
14 Otter Tail would begin to extend service on based on  
15 this map?

16 A. From their -- I believe it's a three-phase line  
17 south of that brown roof building. It's -- it's kind of  
18 the edge of that property on the south side, I believe.

19 Q. And at any time during these proceedings, have  
20 you or anybody at Nodak received a cost estimate of what  
21 Otter Tail's proposed extension would be?

22 A. No. We haven't.

23 Q. And just kind of based on your estimate, I mean,  
24 approximately how much more extension are we looking at  
25 than Nodak's?

1           A.  It's three times further than our facilities,  
2  basically, from that photo.

3           Q.  Okay.  So we're looking at potentially up to  
4  three times the cost of what it would cost Nodak --

5           A.  Very possibly.

6           Q.  -- to extend?

7                   Now, I have -- my understanding is you have also  
8  drafted a map which actually shows where the current  
9  Otter Tail power lines are located; is that correct?

10          A.  Yes.

11                   MS. RADERMACHER:  May I approach, Your Honor?

12                   ALJ DAWSON:  Yes, you may.

13                   MS. RADERMACHER:  And can we bring up Nodak 4,  
14  please?

15          Q.  Now, I've handed you what's been labeled as  
16  Nodak 4.  Is that the map that you drafted which also  
17  indicates where the Otter Tail facilities are located  
18  at?

19          A.  Yes.  In the -- in the smaller region.

20          Q.  Okay.  And so are they the blue that is now  
21  interposed on the map that we were kind of seeing  
22  earlier?

23          A.  Correct.

24          Q.  And again, the Love's service station, although  
25  not outlined on here, there's kind of a red star.  Is

1 that my understanding?

2 A. Yes.

3 Q. And is the red star where the transformer pad  
4 would be located?

5 A. Yes.

6 Q. Okay. And so the blue line that's actually kind  
7 of traversing along Interstate 29 to the east, that's  
8 the line you believe that they would be utilizing?

9 A. Yeah. There's a -- I believe the name of the  
10 road is Park Avenue. It's an east/west line. And I  
11 think that they would be coming off that.

12 Q. Okay. And in preparation for the hearing, did  
13 you receive an exhibit that they intend to introduce  
14 today that kind of gives us an idea of where they're  
15 going to extend service?

16 A. It looked that way, yes --

17 Q. Okay.

18 A. -- off that line.

19 Q. And so that would be the line that you saw in  
20 the exhibit that they would be utilizing?

21 A. Correct.

22 Q. Okay. And so they would have to get over I-29.  
23 Is that usually done by overhead or is that done by  
24 underground?

25 A. Usually by underground because of the safety

1 issues crossing I-29.

2 Q. And so that would require boring under I-29?

3 A. Correct.

4 Q. And if they bore under I-29, depending upon  
5 where they go, you know, and whether or not they want to  
6 try to avoid those ramps, is there a possibility that  
7 they're going to cross Nodak's line in doing so?

8 A. Oh, yeah. They -- they -- they would be.

9 Q. Okay. And how many points do we know for sure  
10 based on their exhibit that they're at least crossing?

11 A. One at a minimum, and depending on if they have  
12 to shift the line to the south, they could be crossing  
13 it a few times.

14 Q. Okay. And if they do an underground line  
15 crossing in that area, particularly like you said where  
16 you see the red line crossing, does that cause concern  
17 for Nodak?

18 A. Yeah, it does operations-wise and safety-wise.  
19 Any time you have two parallel lines on a property, same  
20 property, any construction or anything, locates are  
21 called, 8-1-1 locates are called for that. Once one of  
22 the companies locate their line, everybody could believe  
23 that the line is located in a property and there's no  
24 other lines. With two different companies operating,  
25 those locates could be done at a totally separate time

1 and, you know, it could be an unsafe condition as -- as  
2 that would occur. And if you cross lines when you are  
3 doing the locates, you could actually pick up the other  
4 company's power lines. So there's a couple issues  
5 there.

6 Q. Okay. And so that line that is coming over into  
7 that property, is it -- essentially, by having it  
8 brought into the city or annexed in, is it essentially  
9 land-locking you to some extent on extending off of that  
10 service there?

11 A. Yes. Yes, it is.

12 Q. Now, in preparation of the initial hearing,  
13 we're cognizant that the ten factors aren't going to be  
14 included, although we think it's going to go to the  
15 heart of the two issues still remaining, did you draft  
16 an exhibit that kind of sets forth where Nodak has  
17 members within kind of a two-mile radius of the proposed  
18 site?

19 A. Yes, I did.

20 MS. RADERMACHER: Can you please bring up Nodak  
21 5?

22 May I approach, Your Honor?

23 ALJ DAWSON: You may.

24 MS. RADERMACHER: Thank you.

25 Q. Now, I've handed you what's been labeled as

1 Nodak 5. Can you tell the Commission what that is?

2 A. Okay. Basically it shows the two-mile radius  
3 around the Love's property. And the round dots are  
4 single-phase customers of ours, members of ours, and the  
5 square -- square white indicates the three-phase  
6 customers that we have in the area.

7 Q. Okay.

8 MS. RADERMACHER: Your Honor, may I approach the  
9 exhibit, please?

10 ALJ DAWSON: You may.

11 MS. RADERMACHER: Thank you.

12 Q. So now is it my understanding that this -- or at  
13 least we know this is for sure the city of Drayton,  
14 correct? The city limits?

15 A. Correct.

16 Q. And that there are some areas within here that  
17 are also in the city limits?

18 A. On the north side, yeah.

19 Q. Yep. Right here. So in here, kind of where  
20 these -- some of these dots are?

21 And then this is where the proposed Love's site  
22 is going to be; is that correct?

23 A. Yes.

24 Q. And you indicated that this is a -- that's the  
25 three-phase service?

1 A. Yes.

2 Q. And that's where we'd be extending service off  
3 of?

4 A. Correct.

5 Q. And so this area, it appears that you're serving  
6 quite a few customers either in the city limits or on  
7 the skirts of the city limits; is that correct?

8 A. Correct. Yeah, (inaudible).

9 Q. So if the city continues to annex in the  
10 property on the outskirts of city limits, is that going  
11 to be detrimental to Nodak?

12 MR. SANDERSON: Objection. Calls for  
13 speculation.

14 ALJ DAWSON: Ms. Radermacher?

15 MS. RADERMACHER: Your Honor, to me, I think  
16 it's an obvious answer that if they continue to annex as  
17 we see here today, we're here complaining that there's  
18 an encroachment on our services. We already have  
19 existing services. To me, I think it would be a  
20 detriment to Nodak, and I think it's at least enough  
21 known that it's not speculation.

22 ALJ DAWSON: I'll allow the question.

23 A. I apologize, could you repeat the question?

24 Q. Okay. So if the city would continue to annex  
25 going north there, would that be detrimental to Nodak?

1           A.    Correct.

2                   MR. SANDERSON:  Objection.  Same objection.  
3   Foundation and speculation.

4                   ALJ DAWSON:  I'm going to allow the question and  
5   the answer and, hopefully, he answers it within his  
6   knowledge.

7           Q.    Okay.  So after your initial conversation with  
8   CEI in February 2019, or Nodak's conversation, were  
9   there any other conversations that took place with  
10   Love's Truck Stop?

11           A.    We did have one conversation with the consulting  
12   engineer about contact and sending application for  
13   membership, sign up for power and stuff.  I submitted  
14   that to them and they were going to take care of getting  
15   Love's personnel to sign -- sign it and send it back.  
16   And nothing else after that.

17           Q.    Okay.  Do you know if there was any conversation  
18   that took place between Nodak and the City of Drayton  
19   subsequent to that?

20           A.    I -- I approached the City of Drayton and  
21   requested a franchise fee -- or excuse me -- a franchise  
22   agreement and stuff like that.  And they -- they had to  
23   meet with their city attorney and -- and I left the  
24   meeting and that's the last I had heard from that.

25           Q.    Okay.  And to your knowledge, has the City of

1 Drayton ever denied an application for a franchise or  
2 any sort of granting of a franchise to Nodak Electric?

3 A. To my knowledge, I hadn't been aware of any --  
4 anything like that.

5 Q. Okay. And to your knowledge, did they simply  
6 just not take the matter up?

7 A. Yeah, it -- it got dropped. It went beyond my  
8 -- my level of expertise in the area.

9 Q. Okay. And kind of what involvement has the City  
10 of Drayton been in the -- I mean, have they been a  
11 driving force behind this whole thing with the Love's  
12 service station?

13 A. I -- I assume so from the conversations I've had  
14 with my CEO president, Mylo, that he kind of took the  
15 ball from there and discussed the situation with the  
16 city and Love's, I believe.

17 Q. Okay. So Mylo would have more institutional  
18 knowledge as to what some of those -- some of those  
19 conversations that took place?

20 A. Absolutely.

21 Q. Okay. Now, as stated at the outset, you know,  
22 there's two factors that this Commission needs to  
23 consider, and one of them is that, do you think -- or  
24 would the extension of service interfere with Nodak's  
25 current facilities? Without restating your entire

1 testimony, do you believe that it would -- that Otter  
2 Tail's extension of service here would interfere with  
3 Nodak's facilities?

4 A. I believe so. The safety issue, as I discussed  
5 earlier, and then the plan of our build-out in the area  
6 for future -- future development to the area with our  
7 three-phase lines being updated 2009, I believe it  
8 would.

9 Q. Okay. And would you say that Nodak has made a  
10 pretty substantial investment over the years in bringing  
11 this line out to this property?

12 A. Yes. In the general area.

13 Q. Okay. And do you believe that Otter Tail's  
14 extension of service would be a wasteful duplication or  
15 unreasonable duplication of services out in that area?

16 A. I do. We are only 300 feet away with  
17 three-phase service. We have single-phase existing  
18 service -- or single-phase existing line on the  
19 property. I do believe it would be duplication.

20 Q. Okay. And kind of based on your estimate, if we  
21 only had 350 feet, say, and yet they are three times  
22 that, we are looking at least a thousand feet that they  
23 would potentially have to extend service to this -- to  
24 where the proposed transformer would be located?

25 A. Oh, yes. I believe so.

1 Q. Okay. Because they have no other true feasible  
2 or economically feasible at least way to serve the load  
3 currently?

4 A. As far as I'm aware of, correct.

5 MS. RADERMACHER: I have no further questions,  
6 Your Honor.

7 ALJ DAWSON: Mr. Sanderson.

8 MR. SANDERSON: Thank you.

9 CROSS EXAMINATION

10 BY MR. SANDERSON:

11 Q. Good morning, Mr. Breidenbach. My name is Paul  
12 Sanderson. I represent Otter Tail.

13 I do want to follow up with a few questions, and  
14 I'll start with kind of towards the end you were asking  
15 -- or responding to some questions about the franchise.  
16 Am I correct, Nodak Electric Cooperative does not  
17 currently possess a franchise from the City of Drayton  
18 to provide electric service? Is that correct?

19 A. That's correct.

20 Q. Okay. Now, I believe you indicated Nodak has  
21 requested a franchise from the City of Drayton?

22 A. Yeah. I attended a city council meeting and I  
23 brought up that, and they referred it to their -- I  
24 don't believe their attorney was at the city council  
25 meeting and they were taking it -- the matter up so...

1 Q. Okay. And that would be the Monday, June 10th,  
2 2019, Drayton city council meeting where you personally  
3 attended, spoke at the meeting, and inquired about Nodak  
4 receiving a franchise --

5 A. Yep.

6 Q. -- from the City of Drayton?

7 A. Inquiring what would be the, yeah, premise for  
8 how -- how could we do that if --

9 Q. Okay. And you were kind of asked, and I want to  
10 get into maybe the semantics, you were asked the  
11 question: Well, the City of Drayton has never denied  
12 your request for a franchise. That was your answer?

13 A. Not -- not as far as I know.

14 Q. Okay. But more importantly, you weren't asked  
15 the question: The City of Drayton has never granted  
16 your request -- or Nodak's request for a franchise;  
17 correct?

18 A. I believe so, yes.

19 Q. Okay. And because the City of Drayton did not  
20 request -- or grant your franchise to serve the Love's  
21 Truck Stop, Nodak filed this complaint; correct?

22 A. I don't know if that was the reason. I think we  
23 weren't allowed to serve it. We -- as I said earlier,  
24 we felt it was our service area. We follow our service  
25 boundary lines and that agreement, and it was in our

1 service territory. At the time it wasn't part of city  
2 limits.

3 Q. Okay.

4 A. That's why we proceeded with contacting them  
5 and --

6 Q. Now, you're also aware then on April 13th, 2020,  
7 the City of Drayton passed a resolution authorizing  
8 Otter Tail to serve the Love's Truck Stop located in  
9 McFarland's Addition; correct?

10 A. At the time I was not but...

11 Q. As you sit here today testifying as a  
12 representative on behalf of Nodak, you're aware that on  
13 April 13th, 2020, the City of Drayton passed a  
14 resolution authorizing Otter Tail to provide electric  
15 service to the Love's Truck Stop on the McFarland's  
16 Addition?

17 A. Correct.

18 Q. Okay. Now, one of the things, Nodak provides  
19 electric service to rural customers; correct?

20 A. Uh-huh.

21 Q. And you provide customers outside -- to  
22 customers outside the city of Drayton limits; correct?

23 A. Yes.

24 Q. Okay. Now, on the map that was up there, you  
25 indicated on the north side of Drayton that you provide

1 -- you provide electric service to certain customers;  
2 correct?

3 A. Correct.

4 Q. Okay. And I want to be very clear about this.  
5 Are you testifying to this Commission that the customers  
6 and the property that you provide service to is  
7 geographically located within the city limits of the  
8 city of Drayton?

9 A. That, I'm not sure. We've looked at numerous  
10 maps and we get conflicting information. We did ask the  
11 City of Drayton to provide a map for us and they had  
12 not.

13 Q. Okay. Can you provide this Commission any legal  
14 description of property that you believe you provide  
15 service to that has been annexed into the city of  
16 Drayton on the north side of Highway 66?

17 A. Yes. I believe it was looked up last night. I  
18 personally didn't see the plotting, but I believe it was  
19 looked up last night.

20 Q. And I just want to be clear. You're referring  
21 to what was disclosed to us this morning as Nodak  
22 Exhibit 11, an ordinance annexing a part of a lot in  
23 Richardson Addition to the city of Drayton. Is that  
24 what you're referring to?

25 A. Exhibit 11? I don't have that. Hold on one

1 sec.

2 MS. RADERMACHER: Your Honor, the witness has  
3 not been provided Exhibit 11. Would the -- do you want  
4 me to provide him exhibit --

5 MR. SANDERSON: Yeah, I have no objection to  
6 that.

7 ALJ DAWSON: Please provide --

8 MS. RADERMACHER: Thank you, Your Honor.

9 A. Yes, I believe that's the property.

10 BY MR. SANDERSON:

11 Q. Okay. And I want to be clear, Mr. Breidenbach.  
12 You can testify with certainty that that property that's  
13 been annexed, Nodak provides electric service to a  
14 customer on that property?

15 A. I believe that's the customer, the oil company  
16 or the Cenex gas station at the --

17 Q. Okay. And I want to be clear with your answer  
18 because you -- when you testified earlier, you said,  
19 well, I believe that may be in the city limits that we  
20 serve in this area. Can you definitively state that you  
21 serve a customer on property that's been annexed into  
22 the city?

23 A. To my knowledge.

24 Q. Okay. What did you do to determine what  
25 customer is on the property located in Nodak Exhibit 11?

1           A.   Actually, Mylo found that they were paying  
2           actually city taxes, I believe, or -- and that would be  
3           more appropriate for Mylo to answer that question  
4           probably.

5           Q.   Okay.

6           A.   But it was researched out last night and the  
7           city limit map that we looked at showed that that  
8           property was in city limits.

9           Q.   Okay.  So am I correct you just cannot  
10          definitively say one way or the other whether you serve  
11          a customer on this and that would be better left to Mr.  
12          Einarson?

13          A.   I believe so, yes.

14          Q.   Okay.  Now, I want to talk about your extension  
15          of service, and perhaps if we could pull exhibit --  
16          Nodak Exhibit 4 up.  And I'll ask you a little bit about  
17          that map as we go through this, Mr. Breidenbach.

18                 First off, does Nodak follow the National  
19          Electric Safety Code for designing and constructing and  
20          operating its electric system?

21          A.   Yes.

22          Q.   And would your extension from the -- what I'll  
23          call the farmstead to the west of McFarland's Addition,  
24          your proposed extension would all be done in accordance  
25          with the National Electric Safety Code?

1           A.   That's correct.

2           Q.   Okay.  And I believe you testified to this  
3 Commission that you would run a three-phase extension  
4 from the grain bin transformer that's located on the  
5 west side of McFarland's?

6           A.   On the east side.  Well, it's -- it's on the  
7 west side of the road.  It's on the east side of their  
8 property.

9           Q.   Well, and I'm talking with respect to  
10 McFarland's Addition, the grain bin site is located to  
11 the west of that?

12          A.   West side.  That's correct.

13          Q.   Okay.  And that grain bin site currently is a  
14 Nodak customer that receives three-phase service;  
15 correct?

16          A.   Correct.

17          Q.   Okay.  And just so I'm clear, the next closest  
18 three-phase customer that Nodak serves is approximately  
19 a mile to the north?

20          A.   I believe so, yes.

21          Q.   Okay.  So you have an existing customer that's  
22 currently receiving three-phase right to the west of  
23 McFarland's?

24          A.   Correct.

25          Q.   And you plan to extend a line approximately

1 350 feet to the east to serve the proposed Love's Truck  
2 Stop?

3 A. Correct.

4 Q. Okay. Now, on Exhibit 4, we see a red, going  
5 through the south side of McFarland's Addition, below --  
6 below the red star we see a red line. And that is  
7 Nodak's current single-phase line; correct?

8 A. Correct.

9 Q. And Nodak is not -- and that's the line that  
10 actually crosses McFarland's Addition; correct?

11 A. Yes.

12 Q. And Nodak is not proposing to run service off  
13 that line to serve the Love's Truck Stop; correct?

14 A. Correct.

15 Q. Okay. Now, more importantly, on this map, on  
16 the -- on the west side of McFarland's Addition, on the  
17 property, there is a dotted blue line; correct? Do you  
18 see that?

19 A. Yes.

20 Q. And what is that dotted blue line? Can you  
21 explain to the Commission?

22 A. Yes. That's Otter Tail's transmission line.

23 Q. Okay. So Otter Tail currently has a  
24 transmission line located on McFarland's Addition as  
25 well; correct?

1           A.    Yes.

2           Q.    Okay.  And I believe you said it wouldn't --  
3 similar to your single-phase line, it would be possible  
4 for Otter Tail to run service off that transmission  
5 line, but again, utilities don't do that?

6           A.    Not practically.

7           Q.    Okay.  Similarly, like you could run service off  
8 your single-phase but that's not what you're intending  
9 to do; correct?

10          A.    (No audible response.)

11          Q.    Okay.  So both Nodak and Otter Tail both have  
12 existing lines on the McFarland's Addition; correct?

13          A.    Yes.

14          Q.    But both Otter Tail and Nodak do not -- your  
15 understanding -- do not intend to provide service to  
16 Love's from either of those existing lines; correct?

17          A.    Correct.

18          Q.    Okay.  Now, going back to your proposed  
19 extension off the farmstead to the west, your yellow  
20 line would run from that farmstead directly over to the  
21 location of the star; correct?

22          A.    Yes.

23          Q.    And to do that, Mr. Breidenbach, you need to  
24 cross Otter Tail's existing transmission line; correct?

25          A.    Correct.

1 Q. And Otter Tail's existing transmission line, is  
2 that an overhead line?

3 A. Yes.

4 Q. And you're proposing to run underground service.  
5 Am I correct?

6 A. Correct.

7 Q. Okay. Would your underground service interfere  
8 with their existing overhead lines?

9 A. No.

10 Q. Okay. Why do you say that?

11 A. Voltage, the way it's ran, and there's  
12 transmissions crisscrossing all of North Dakota. And if  
13 you didn't cross those lines, obviously nobody would get  
14 power.

15 Q. Is there anything in the National Electric  
16 Safety Code that would prohibit a utility from running  
17 an underground line over another company's overhead  
18 line?

19 A. Running another?

20 Q. Is there anything -- I'll rephrase that  
21 question, Mr. Breidenbach.

22 Is there any provisions in the National Electric  
23 Safety Code that would prohibit Nodak from running an  
24 underground line under Otter Tail's existing overhead  
25 transmission line?

1           A.   No.

2           Q.   Okay.  And I believe you testified and told this  
3 Commission, that's something that happens all the time  
4 and there's no problems with it, happens all over North  
5 Dakota; correct?

6           A.   Has to.

7           Q.   Okay.  It has to.  Okay.  And that's not an  
8 interference -- your testimony is your extension from  
9 that farmstead to the west crossing Nodak's overhead  
10 line would not interfere?

11          A.   Correct.

12          Q.   Okay.  And just for purposes of clarification,  
13 where does Love's intend to place its underground gas  
14 tanks for the Love's facility?

15          A.   I believe on the site plan, it kind of showed  
16 where it would go.  I think they're to the -- looks like  
17 they -- they have a bay of fuel -- fuel places on the --  
18 on the south side and on the north side.  And I'm not  
19 sure if they have some on the west side of their  
20 building or not.

21                 ALJ DAWSON:  And you're looking at Exhibit 1?

22                 THE WITNESS:  Yes.  Uh-huh.

23          Q.   Now, let me ask you this.  Going back to  
24 Exhibit 4, coming off -- and maybe Exhibit 2 is a better  
25 one, if you'll leave it there.

1           When we see the yellow line going straight from  
2 the farmstead over to the star where Love's facility is,  
3 it appears there's a driveway between the farmstead and  
4 the Love's facility. Do you see that?

5           A. Yes.

6           Q. Is that the current customer's driveway?

7           A. Yeah. He has a large portion of it off the road  
8 that he uses as a driveway.

9           Q. Okay. And then right adjacent to the farmstead  
10 we see what's marked on the map 160 Avenue Northeast?

11          A. Yep.

12          Q. Correct?

13          A. Uh-huh.

14          Q. And is my understanding from your testimony that  
15 Nodak just intends to trench right through that driveway  
16 and right through 160 Avenue Northeast?

17          A. That's our standard method of construction,  
18 correct. We get the property -- property's owner  
19 permission and then we verify with the county if that's  
20 permissible.

21          Q. Have you contacted or received permits from the  
22 county to trench right through their roadway?

23          A. We have a permit for that. It was a global  
24 permit when we first started putting underground in in  
25 all the townships. And generally, if they don't have a

1 contingency not to allow it, we would bore it.

2 Q. Okay. So if the county doesn't allow you to  
3 trench right through the existing roadway, you would  
4 bore under it?

5 A. Possibly, yep.

6 Q. Okay. Is there anything in the National  
7 Electric Safety Code that would prohibit you from boring  
8 under 160 Avenue Northeast to run your line extension?

9 A. No. None that I'm aware of.

10 Q. Okay. Is it something that Nodak does on a  
11 regular basis?

12 A. Yes.

13 Q. Okay. It's common in the industry to bore under  
14 a roadway?

15 A. Yes.

16 Q. And I think if we look at -- if we look at your  
17 extension in red on the south side of McFarland's  
18 Addition, Nodak bore that line under I-29; correct?

19 A. Correct.

20 Q. Any problems that Nodak has had boring under  
21 I-29 to run its single-phase line from McFarland's  
22 Addition under I-29 to the east?

23 A. No.

24 Q. Okay. And that's, again, something that occurs  
25 frequently in North Dakota. Okay. Now, looking at --

1 again, that red line on the south side of McFarland's,  
2 the single-phase, it runs on the south side of  
3 McFarland's heading east, it's bored under I-29, and  
4 then it comes out on the east side of I-29. Do you see  
5 that?

6 A. Yes.

7 Q. Okay. When it comes out on the east side, does  
8 it then become overhead and is an underbuild on the  
9 overhead poles?

10 A. Yes. There's one span of single-phase primary  
11 and then it joins up with Otter Tail's transmission.

12 Q. Okay. And you said it joins up with Otter  
13 Tail's transmission. Am I correct you said this -- this  
14 red line that we're talking about on the south side of  
15 McFarland's that runs on the east side of I-29 was  
16 constructed in approximately the 1950s?

17 A. That, I'm unaware of on the east side. We do  
18 share poles with Otter Tail and I don't think they're  
19 that old, or they were at one time and they were  
20 rebuilt.

21 Q. Okay. And so where we see your line running to  
22 the north on the east side of I-29, that red line, you  
23 said that's shared with poles with Otter Tail's  
24 transmission line; correct?

25 A. Correct.

1 Q. By chance, who owns those poles?

2 A. Otter Tail does.

3 Q. Otter Tail?

4 A. Uh-huh.

5 Q. Okay. And at some point, Otter Tail had  
6 existing line there and they allowed Nodak to underbuild  
7 on their existing poles?

8 A. Correct.

9 Q. Okay. And the reason Nodak wanted to do that is  
10 because you were serving customers north of 66 and  
11 that's the line you were using to run to those  
12 customers; correct?

13 A. Correct.

14 Q. And that was a savings for Nodak, to run its  
15 line on Otter Tail's poles?

16 A. Uh-huh.

17 Q. Correct?

18 A. Yep.

19 Q. Okay. And Otter Tail did Nodak a favor and  
20 saved Nodak a significant amount of money by letting  
21 Nodak use Otter Tail's existing poles; correct?

22 A. They allowed us to do that.

23 Q. Okay. And in the location where it comes up and  
24 namely by -- you mentioned Park Avenue on the south side  
25 of Drayton there. Do you see that?

1 A. Yep. Uh-huh.

2 Q. And that Park Avenue runs east and west;  
3 correct?

4 A. Uh-huh.

5 Q. If we follow that Park Avenue over to the west  
6 and it would intersect -- and it doesn't, but if you  
7 kept going, it would intersect with your red line;  
8 correct?

9 A. Yes.

10 Q. And that red line in that location is an  
11 overhead, Otter Tail's -- or excuse me -- Nodak's  
12 overhead line on Otter Tail's poles; correct?

13 A. Correct.

14 Q. Okay. And so just so I'm clear, the line  
15 crossing that you were talking -- when you testified  
16 Otter Tail is going to interfere with Nodak's line,  
17 Nodak's line would be that overhead line there; correct?

18 A. Correct. That, or if they had to jokey it  
19 around to the south side, it would get in the way of the  
20 underground line crossing there.

21 Q. Okay. You said if they have to do that. That's  
22 not what's indicated on the exhibit that you've seen;  
23 correct?

24 A. Uh-huh. Yeah. During construction, things  
25 happen where you can't do exactly what you want to do.

1 Q. Okay. But just so we're clear, if they run --  
2 if Otter Tail runs directly to the west off Park Avenue,  
3 Otter Tail's line would be intersecting Nodak's existing  
4 overhead line; correct?

5 A. I believe so, from the print that I've seen.

6 Q. Yep. And I believe you testified earlier,  
7 running an underground line under an existing overhead  
8 does not cause interference with the existing overhead,  
9 does it?

10 A. No.

11 Q. That's something that utilities do throughout  
12 North Dakota regularly; correct?

13 A. Correct.

14 Q. And that's something that Nodak does regularly;  
15 correct?

16 A. Yes.

17 Q. And that's something that Nodak would do to  
18 serve the Love's site, would actually run an underbuilt  
19 under Otter Tail's existing overhead; correct?

20 A. Not in that case we wouldn't.

21 Q. Not in that case, but your proposal, again, is  
22 to run your underground from the farm on the west of  
23 McFarland's --

24 A. And run --

25 Q. -- under the overhead?

1           A.    Yes.    Correct.

2           Q.    So both Nodak and Otter Tail are proposing to  
3 extend service into McFarland's by crossing the other  
4 party's overhead lines with underground service;  
5 correct?

6           A.    Yeah.   The difference is, it's a transmission  
7 line as opposed to a distribution line.

8           Q.    Okay.   And on that, is there anything that  
9 you're aware of in the National Electric Safety Code  
10 that would prohibit Otter Tail from running an  
11 underground extension under Nodak's current existing  
12 distribution line?

13          A.    Not in the code, no.

14          Q.    Okay.   And just so we're clear, the extension  
15 you said -- Nodak's extension from the east side of I-29  
16 running under your overhead that you previously  
17 testified would interfere, the reason your overhead is  
18 there is because Otter Tail allowed you to run your line  
19 on their existing poles; correct?

20          A.    We got permission to do that, correct.

21          Q.    Was there a contract or written agreement that  
22 Nodak has memorializing the rights and responsibilities  
23 with Otter Tail to allow the underbuild on Otter Tail's  
24 poles?

25          A.    Yes.    I believe we pay a fee to allow -- to be

1 on that pole -- those poles.

2 Q. And just so I'm clear, Mr. Breidenbach, if Otter  
3 Tail was to run an extension under Nodak's existing  
4 overhead lines, that would not require Nodak to move  
5 those overhead lines in any way; correct?

6 A. Correct.

7 Q. It would not -- Otter Tail constructing an  
8 underground extension under Nodak's overhead lines would  
9 not interrupt service to any of Nodak's customers;  
10 correct?

11 A. It shouldn't done the proper way.

12 Q. Okay. If done properly, it should not interrupt  
13 your service?

14 A. Correct.

15 Q. And running an underground extension, Otter  
16 Tail's underground extension under your overhead line on  
17 the east side of I-29 would not cause any outages to  
18 Nodak's existing customers; correct?

19 A. Correct.

20 Q. Okay. Now, you were asked a question about  
21 unreasonable duplication of services. Do you recall  
22 those questions and your opinions?

23 A. Yes.

24 Q. And I'm correct, Nodak does not provide any  
25 electric service to any customer in McFarland's

1 Addition; correct?

2 A. McFarland's Addition is the new Love's --  
3 correct. Currently we don't.

4 Q. Okay. Currently you don't. And what you have  
5 to do to serve -- to potentially serve the Love's  
6 facility, you have to construct three-phase service into  
7 that property; correct?

8 A. Yes.

9 Q. And that would be the same -- for Otter Tail to  
10 serve, they have to run three-phase service into that  
11 property; correct?

12 A. Correct.

13 Q. Because neither utility has existing three-phase  
14 service to serve those customers; correct?

15 A. We have facilities but not three-phase  
16 facilities.

17 Q. Now, you mentioned some communications and  
18 testified earlier, communications with Love's, and that  
19 on June 10th, 2019, you talked to Love's engineer to  
20 start the paperwork for new service; is that correct?

21 A. Love's engineers, yes.

22 Q. Okay.

23 A. CEI, I believe, is the company's name.

24 Q. And you requested them to submit an application  
25 for membership to the cooperative; correct?

1 A. Correct.

2 Q. And in order for a person to receive service  
3 from Nodak, they need to be a member of the cooperative;  
4 correct?

5 A. Yes.

6 Q. And that's pursuant to the co-op's statutes;  
7 correct?

8 A. Yes.

9 Q. And in fact, Love's has never requested service  
10 from Nodak; correct?

11 A. Correct.

12 Q. And Love's is not currently a member of Nodak's  
13 cooperative; correct?

14 A. Correct.

15 Q. And Love's has never asked or indicated that  
16 they want to be a member of Nodak's cooperative?

17 A. I wasn't allowed to speak with any Love's  
18 representatives when I was making my plans for power to  
19 the site.

20 Q. Now, on your cost estimate for service that you  
21 talked about, there's no cost estimate for boring under  
22 160th Street, am I correct, in your estimate?

23 A. Correct.

24 Q. Okay. But you do have trenching costs on there;  
25 correct?

1           A.    Correct.

2           Q.    And that's \$2 a foot trenching that you  
3 indicated?

4           A.    Yes.

5           Q.    And so you believe that trenching through the  
6 customer's driveway and through 160th Street if you can  
7 do it will cost \$2 a foot?

8           A.    Yeah.

9           Q.    Okay.  And so just I'm clear, on Exhibit 3, you  
10 proposed to serve Love's three-phase service with a 25  
11 -- or 225 kilovolt transformer?

12          A.    Correct.

13          Q.    And are you saying that's the size Love  
14 requested or that would serve the Love's facility?

15          A.    After talking to the engineers and looking at  
16 comparable sites, it seemed the most practical.

17          Q.    And I guess my question was a little different,  
18 Mr. Breidenbach.  Has Love's indicated to you that a 225  
19 kilovolt transformer will be sufficient to serve that  
20 site?

21          A.    I asked the engineers.  Basically, it was a  
22 conversation between them.  I, again, never spoke  
23 directly with Love's, but with their engineers I had.

24          Q.    And I want to ask you, one of the things you had  
25 testified, and when we look on the map, you said, again,

1 that's -- that you have facilities, and you describe  
2 them, specifically looking at that single-phase line on  
3 the south side of -- on the south side of McFarland's  
4 Addition --

5 A. Uh-huh.

6 Q. -- and you referred to that as facilities?

7 A. Yes.

8 Q. Okay. But facilities does not equate to service  
9 because you don't serve anybody in McFarland's -- any  
10 customer in McFarland's Addition; correct?

11 A. We don't have a meter in there, no.

12 Q. Okay. And the same with -- where we're looking  
13 at, where your single-phase crosses under I-29 and comes  
14 up, when we see south of Highway 66, you have facilities  
15 in the city of Drayton, correct, on the south side?

16 A. Correct.

17 Q. But you don't serve any customers within the  
18 city of Drayton on the south side of 66; correct?

19 A. Not on the south side.

20 Q. Okay. Now, you were talking about -- you were  
21 asked about the dangers of locating and that there could  
22 be a danger for the line extension for a location issue  
23 on Otter Tail's extension; correct?

24 A. Yes. There could be confusion with two separate  
25 underground power lines, two separate operators located

1 in the same area.

2 Q. Yeah. But as we know, if Otter Tail is able to  
3 build their extension where it is, it's going to be easy  
4 to locate Nodak's line because you're overhead; correct?

5 A. Well, are you talking on the property or --

6 Q. I'm talking -- well, let's first start, the  
7 extension off -- the extension off Park Avenue in the  
8 city of Drayton on the east side of I-29. Let's start  
9 right there.

10 A. Okay.

11 Q. To locate -- if they run their line, like  
12 they've indicated on -- or their line extension like  
13 they've indicated on their map off Park Avenue to the  
14 west, it's going to cross Nodak's existing overhead;  
15 correct?

16 A. Correct.

17 Q. But the location of Nodak's existing overhead  
18 will be really easy to locate in that area; correct?

19 A. Overhead. But the underground just to the south  
20 of it.

21 Q. Okay. But that's -- at least from the map  
22 you've seen, the underground to the south is not being  
23 impacted by the current design; correct?

24 A. It's not being impacted, but when you have  
25 different operators, as I said, getting an 8-1-1 call,

1 Nodak would locate their cable. If there's a contractor  
2 waiting to dig, they see a cable located and they think  
3 it's ready to go, it's -- it's a timing thing that could  
4 cause a situation where it's not good for a digging  
5 contractor.

6 Q. And on the timing thing, and I know the  
7 Commission is very familiar with this, each utility must  
8 locate and clear its own ticket for 8-1-1 notification?

9 A. Right.

10 Q. But again, to my point, the design as it exists  
11 for Otter Tail, based on your understanding, is Otter  
12 Tail would not be crossing any Nodak underground  
13 facilities; correct?

14 A. Correct.

15 Q. Okay.

16 A. From their routing.

17 Q. And one of the things you indicated earlier in  
18 your testimony is, for Nodak to extend its service, it  
19 must cross one time Otter Tail's existing lines;  
20 correct?

21 A. The transmission line on the west side of the  
22 property.

23 Q. So Nodak will be crossing Otter Tail's existing  
24 transmission line one time; correct?

25 A. Correct.

1 Q. And based on your understanding of Otter Tail's  
2 extension, it will cross your overhead distribution one  
3 time; correct?

4 Is that a yes?

5 A. Yes.

6 Q. Okay. And not to be rude, Mr. Breidenbach, just  
7 so we have a clear record.

8 And just so we're also clear, the transmission  
9 line that you have on the south side of McFarland's  
10 Addition, Otter Tail's proposed extension would not  
11 cross that line as designed?

12 A. As the design I've seen, correct.

13 Q. Okay.

14 A. Design submitted.

15 MR. SANDERSON: Mr. Breidenbach, I have no  
16 further questions. Thank you.

17 ALJ DAWSON: Mr. Johnson.

18 CROSS EXAMINATION

19 BY MR. JOHNSON:

20 Q. So other than the Cenex that's north of 66, do  
21 you serve any other businesses or residents inside city  
22 limits of Drayton?

23 A. Not that I'm aware of.

24 MR. JOHNSON: Okay. That's all the questions I  
25 have.

1 ALJ DAWSON: Commissioner Kroshus.

2 COMMISSIONER KROSHUS: All right. Well, good  
3 morning, Mr. Breidenbach. Is that correct? Okay.

4 THE WITNESS: Morning.

5 COMMISSIONER KROSHUS: Do you know, can you tell  
6 me how long McFarland's Addition has been identified as  
7 McFarland's Addition? Was that just recent?

8 THE WITNESS: Yeah. I didn't even know it had a  
9 name actually. It must have been when it was plotted  
10 out and stuff. It was a low area. As I said, there was  
11 a farm kind of to the south of the property itself. And  
12 I guess, yes, I just found out when -- when they plotted  
13 it, it was called --

14 COMMISSIONER KROSHUS: And I'm not asking you to  
15 speculate, but it seems like McFarland's Addition  
16 probably wasn't even named until it was decided that it  
17 would be annexed into the city. So then it was labeled  
18 as such. And again, I could be inaccurately assuming,  
19 but did -- but calling it that area, the McFarland's  
20 Addition area, did Otter Tail ever express any interest  
21 in wanting to serve that area prior to the Love's  
22 announcement?

23 THE WITNESS: Not that we're aware of.

24 COMMISSIONER KROSHUS: So didn't work with you  
25 at all saying --

1 THE WITNESS: No.

2 COMMISSIONER KROSHUS: How long is -- do you  
3 know when Love's made the announcement or indicated that  
4 they were looking to place a truck stop there?

5 THE WITNESS: When we became aware of it, it was  
6 early in January of 2019.

7 COMMISSIONER KROSHUS: Okay. And then that's --  
8 it sounds like Love's started working with you at that  
9 point in time on, can we get power to the site,  
10 etcetera --

11 THE WITNESS: Yep.

12 COMMISSIONER KROSHUS: -- get service?

13 THE WITNESS: Correct.

14 COMMISSIONER KROSHUS: Were you aware if they  
15 were working with Otter Tail at the same time?

16 THE WITNESS: No. We -- we assumed they weren't  
17 because, again, we -- we follow our service boundary  
18 agreement maps and it was outside that so we thought  
19 they were our service.

20 COMMISSIONER KROSHUS: Okay. There was some --  
21 you had some questions about shared lines, or poles, I  
22 should say. Would you identify or quantify that as  
23 shared or -- you're leasing the space; correct?

24 THE WITNESS: Correct. Correct.

25 COMMISSIONER KROSHUS: I think it was referred

1 to as doing you a favor. Would you view it that way or  
2 would you view it as a business transaction?

3 THE WITNESS: It's a -- it's a smart way to  
4 build out line when you have small areas to work in to  
5 run line. You don't take up that much footprint so it's  
6 -- it's just a good practice.

7 COMMISSIONER KROSHUS: Okay. Does Otter Tail  
8 ever use your --

9 THE WITNESS: They don't, no.

10 COMMISSIONER KROSHUS: -- utility poles,  
11 infrastructure?

12 THE WITNESS: We have quite a bit underground.  
13 Yeah, we have about 8,000 miles of line and most of it  
14 -- or half of it is underground so...

15 COMMISSIONER KROSHUS: Okay. Did Love's ever  
16 give you any indication -- it sounds like the  
17 conversations essentially went cold --

18 THE WITNESS: Yeah.

19 COMMISSIONER KROSHUS: -- at some point in time.  
20 And then did they give you a reason why?

21 THE WITNESS: Not to me, no.

22 COMMISSIONER KROSHUS: Okay. Looking at where  
23 the lines are, which line was in first? Do you know?  
24 Was it Otter Tail's overhead transmission line that's  
25 been referred to, I believe, as the blue dotted line on

1 exhibit -- is it Exhibit 4?

2 THE WITNESS: Yeah.

3 COMMISSIONER KROSHUS: Or --

4 THE WITNESS: I really couldn't say for sure.  
5 Early or late 1948, 1950, we served the area with  
6 overhead line and we had, as I said, a customer in  
7 there. I don't know when Otter Tail would have built  
8 theirs.

9 COMMISSIONER KROSHUS: Okay. So someone --  
10 well, and then you've got one line that -- would you say  
11 the red line going from east to west, we've got the  
12 grain bin site on the far left of the exhibit that's up  
13 on the screen right now.

14 THE WITNESS: Yep.

15 COMMISSIONER KROSHUS: Exhibit 4, to be clear.  
16 There are grain bins.

17 THE WITNESS: Uh-huh.

18 COMMISSIONER KROSHUS: On the west. That would  
19 be to the -- on the very west edge of the exhibit map.  
20 Do you know when that underground line that extends -- I  
21 believe it's the three-phase that would cross the  
22 McFarland's Addition on the map under the interstate, do  
23 you know when that was put in? I think you stated that  
24 but could you repeat that again?

25 THE WITNESS: 2009 was when it was -- we had an

1 existing underground line in there previous. In 2009 we  
2 did an upgrade and replaced all the underground in that  
3 area.

4 COMMISSIONER KROSHUS: Okay. And then the area  
5 to the north, is that 66th?

6 THE WITNESS: Yes.

7 COMMISSIONER KROSHUS: Was that -- have you ever  
8 been approached by Otter Tail or questioned as to  
9 whether or not you should be serving that area?

10 THE WITNESS: Not really. I'm not sure when  
11 those customers came in. I know one is a North Dakota  
12 state -- like a maintenance thing for roads, DOT service  
13 and stuff. And we've served that for many years.

14 COMMISSIONER KROSHUS: So you do currently serve  
15 some annexed areas of Drayton, I think it was said  
16 earlier or stated earlier?

17 THE WITNESS: I believe it's that one service  
18 gas station, yeah. Yeah.

19 COMMISSIONER KROSHUS: Okay. There are other  
20 towns, cities in North Dakota that you serve --

21 THE WITNESS: Yes.

22 COMMISSIONER KROSHUS: -- annexed areas, but it  
23 really goes back to -- but you have the franchise in  
24 those areas?

25 THE WITNESS: Correct. Grand Forks, we serve

1 basically half of it. We have service boundary  
2 agreements with Xcel Energy and we have our boundaries,  
3 and we serve probably half the town and Xcel serves the  
4 other.

5 COMMISSIONER KROSHUS: Okay. On a franchise  
6 agreement, once you have it, is it something you always  
7 have or can a city change its mind at any time and say  
8 you no longer have the franchise?

9 THE WITNESS: They could. I think ours was just  
10 revisited maybe five years ago with the City of Grand  
11 Forks and they -- they asked us different questions. I  
12 can't remember all the questions that they asked, but we  
13 were re-validated basically for another 20-year time  
14 frame.

15 COMMISSIONER KROSHUS: Okay. So that's a  
16 20-year segment?

17 THE WITNESS: Yes.

18 COMMISSIONER KROSHUS: Would you call that  
19 common? It's not an area I work in. I'm just --

20 THE WITNESS: I think so. Yeah. The previous  
21 one was 20-year increment as well.

22 COMMISSIONER KROSHUS: Okay. So you can have a  
23 lot of -- you can have infrastructure in place to serve  
24 an area, you have the franchise, but you could have the  
25 rug pulled out from underneath if a city decided that

1 they wanted to go in a different direction?

2 THE WITNESS: I guess it's possible. It hasn't  
3 happened but it's possible.

4 COMMISSIONER KROSHUS: Right, right, right. But  
5 it's a concern for me as I'm going through, not just  
6 this case but it's really something I'm starting to  
7 think about. And of course, we don't want the stranded  
8 systems, if you will, or --

9 THE WITNESS: Right.

10 COMMISSIONER KROSHUS: -- but at the same time  
11 -- I don't have any other questions. Thank you.

12 ALJ DAWSON: Commissioner Fedorchak.

13 COMMISSIONER FEDORCHAK: Thank you, Judge.

14 Mr. Breidenbach, thank you for your testimony so  
15 far. So on the franchise agreement, were you guys  
16 engaged or aware of the negotiations between Otter Tail  
17 and the city to extend and -- the franchise agreement  
18 and the territory and annex new areas in? Did you  
19 oppose it? Or is there any way for you to be engaged in  
20 those negotiations?

21 THE WITNESS: I wasn't personally involved in it  
22 or heard of it and stuff.

23 COMMISSIONER FEDORCHAK: Are you the main person  
24 in this area from your company who would be or is there  
25 somebody else?

1 THE WITNESS: The franchise? It would probably  
2 go through Mylo, the CEO.

3 COMMISSIONER FEDORCHAK: All right. And Mylo is  
4 going to be testifying?

5 THE WITNESS: Yes.

6 COMMISSIONER FEDORCHAK: Okay. Mylo would be  
7 the one to lead Nodak's efforts to obtain a franchise  
8 agreement?

9 THE WITNESS: Correct.

10 COMMISSIONER FEDORCHAK: Okay. So I'll save all  
11 those questions to him. What about service area  
12 agreements, is that Mylo as well, involved in  
13 negotiating those, revisiting them to --

14 THE WITNESS: Mostly, yes. I -- I offer  
15 support, but Mylo probably would.

16 COMMISSIONER FEDORCHAK: Okay. Very good. Then  
17 I'll stick to more of the technical questions, and one  
18 of the key issues of the hearing is whether Otter Tail's  
19 extension would interfere with existing services  
20 provided by Nodak. And we've talked a lot about a lot  
21 of specific things, but I still haven't really gotten a  
22 great answer on how their extension to this area would  
23 interfere with your service so I'm going to give you  
24 another chance to kind of just summarize that, how --  
25 because you're the engineer; right?

1 THE WITNESS: Uh-huh.

2 COMMISSIONER FEDORCHAK: So this is something  
3 that definitely is in your area of expertise.

4 THE WITNESS: Yeah.

5 COMMISSIONER FEDORCHAK: How would their  
6 extension to serve here interfere with your service?

7 THE WITNESS: Well, when we're talking about  
8 locates, things like that, and it also interferes with  
9 us for the fact that we build out infrastructure there  
10 to serve the whole area. We don't just put power to,  
11 like, the grain handling service and -- and don't have  
12 enough for the next person. So we build out our whole  
13 infrastructure so that we can serve an area, not just  
14 one person. So that's -- that's basically how it would  
15 conflict with our service.

16 COMMISSIONER FEDORCHAK: Okay.

17 THE WITNESS: And then the proximity to it would  
18 be a little confusing as well for the locates and things  
19 like that, being two facilities are located on the same  
20 property.

21 COMMISSIONER FEDORCHAK: Right. Just so I can  
22 kind of restate what I think I heard you say, it's  
23 not -- the technical interference probably isn't the  
24 biggest issue. It's your -- interfering with your plans  
25 and ability to provide service to that area based on

1 your existing investments in that area?

2 THE WITNESS: Correct. That's a lot better way  
3 to do it than I could have said it.

4 COMMISSIONER FEDORCHAK: Okay. All right.  
5 Thank you. I think the rest of my questions are  
6 probably going to be for Mylo, so thank you.

7 ALJ DAWSON: Commissioner Christmann.

8 COMMISSIONER CHRISTMANN: Where you cross the  
9 interstate there, can you tell me why you're running  
10 from the west to the east and -- okay, I didn't have my  
11 mic on.

12 So where you cross the interstate with your  
13 existing line, you're running from the west to the east  
14 and you get almost there, then you jump up a little to  
15 the north and cross and then you go back to the south  
16 and then head northeasterly. Why would that diversion  
17 have been there? And I don't -- I'm just trying to  
18 figure out what kinds of things would cause someone to  
19 do their bore not parallel with where their lines seem  
20 to be going.

21 THE WITNESS: Most of the -- most of the line is  
22 parallel to the bore and stuff. As I said, this was a  
23 replowed line so there was an existing line in there so  
24 we -- I don't know at the time, but we may have to  
25 offset it to avoid the other -- other line that was in

1 there, and that's why we got a little notch in it and  
2 stuff. And it also could have been one of the requests  
3 from the DOT. We have to provide permits to -- to  
4 cross, and they might have requested that we cross at a  
5 certain point and stuff.

6 COMMISSIONER CHRISTMANN: So like they could  
7 have a culvert or something there?

8 THE WITNESS: Exactly.

9 COMMISSIONER CHRISTMANN: Okay. And then as the  
10 engineer, this 1968 service agreement, is that something  
11 that you manage those service agreements or -- as this  
12 started developing, I'm guessing nobody at Nodak  
13 participated in drawing that up in '68.

14 (Laughter)

15 COMMISSIONER CHRISTMANN: So who's responsible  
16 there for even knowing that there's a 1968 agreement and  
17 having access to it and bringing it to light?

18 THE WITNESS: Well, in cases like this, any time  
19 there's an area of controversy, we have a -- we have  
20 that agreement within arm's reach. We can look these  
21 things up. And we follow it. If there's a boundary  
22 that -- or a customer requests power that's within a  
23 boundary, we -- we don't cross it unless we talk to that  
24 company and -- and get a release or what have you on it.

25 COMMISSIONER CHRISTMANN: So does that mean you

1 have a service agreement for everywhere where you have a  
2 boundary with another utility company or every city  
3 or --

4 THE WITNESS: I wish. No. It was -- Nodak is  
5 comprised of many different co-ops that were merged  
6 together and stuff. And the base companies way back in  
7 the day used to meet periodic with Otter Tail or Xcel  
8 and line these things up so we have maps of -- of all  
9 those things. And that's basically what we do. We  
10 haven't met, you know, on a regular basis for quite some  
11 time and we just go by with what we have in print.

12 COMMISSIONER CHRISTMANN: And you have some  
13 communities in the area of Nodak's service area that are  
14 served by other investor-owned utilities. You must  
15 border up against some NSP --

16 THE WITNESS: Yep.

17 COMMISSIONER CHRISTMANN: -- towns too; right?

18 THE WITNESS: Yep. Xcel and Otter Tail are our  
19 main ones.

20 COMMISSIONER CHRISTMANN: And so between the  
21 two, about how many service agreements like this do you  
22 think you have?

23 THE WITNESS: With Otter Tail, it's a -- it's an  
24 agreement probably about half-inch thick with our maps  
25 indicating the township that the village is located in.

1 And then in Devils Lake, there's areas that we have  
2 basically determined who was going to serve those folks  
3 and stuff. So that's a broader range.

4 COMMISSIONER CHRISTMANN: So now I've confused  
5 myself even more. You have one master agreement with  
6 Otter Tail that has different sections and has details  
7 for Drayton and details --

8 THE WITNESS: Yep.

9 COMMISSIONER CHRISTMANN: -- for McVille and  
10 such? There's one agreement from 1968 that covers all  
11 of these?

12 THE WITNESS: Correct. The terminology, the  
13 wording of the agreement is all part of the package, and  
14 then the maps are addendum to the whole agreement. I  
15 apologize. I should have brought all of it with me.

16 COMMISSIONER CHRISTMANN: No apology necessary.  
17 That helps a lot. No other questions. Thank you.

18 ALJ DAWSON: My understanding is that we'll have  
19 to take a break a little bit before 11:00 so that the  
20 commissioners can attend a hearing on a bill. So I'm  
21 asking now, can we go straight through until then, or  
22 does anybody need a convenience break at this time?

23 MS. RADERMACHER: If we could take like two  
24 minutes, that would be greatly appreciated.

25 ALJ DAWSON: So we'll take a convenience break

1 until a quarter after based on that clock up there.

2 MS. RADERMACHER: Thank you.

3 (Recess)

4 ALJ DAWSON: And we're back on the record.

5 Ms. Radermacher.

6 MS. RADERMACHER: Yes, Your Honor. Can  
7 everybody hear me? My understanding is I might be a  
8 little soft so...

9 COMMISSIONER FEDORCHAK: I can hear you.

10 MS. RADERMACHER: Wonderful. Thank you.

11 REDIRECT EXAMINATION

12 BY MS. RADERMACHER:

13 Q. To your knowledge, has Otter Tail requested a  
14 permit from the DOT in order to be able to bore under  
15 Interstate 29?

16 A. Not to my knowledge.

17 Q. And is a permit required by the DOT?

18 A. Yes.

19 Q. What kind of process is it to be able to get a  
20 permit from the DOT to cross Interstate 29?

21 A. It's an application process. You fill out a  
22 description where you want to cross and it goes through  
23 for review. They either have objections to it or come  
24 back with more questions or you might have to modify it,  
25 as we did in that example there. We couldn't go across

1 because of some, either obstruction or reason that the  
2 DOT had that we couldn't go straight.

3 Q. Okay. And to your knowledge, does Otter Tail  
4 currently have a line that's bored under I-29?

5 A. Not in that area, not that I'm aware of, no.

6 Q. Okay.

7 MS. RADERMACHER: And can I have the Exhibit 2  
8 brought up, please? May I approach the exhibit?

9 ALJ DAWSON: You may.

10 MS. RADERMACHER: And if we could go just --  
11 there.

12 Q. So I think it was Commissioner Christmann had  
13 brought up why would you zigzag in this particular area.  
14 And what would be one of the reasons why that could have  
15 occurred?

16 A. As we said, there could have been a culvert in  
17 there or some obstruction in the -- basically, the  
18 construction of I-29 that they did not want us to be in.

19 Q. And just kind of a -- you know, it seems to me  
20 like maybe a logical question, but would it be easier to  
21 bore further down, avoiding the off and on ramps on  
22 I-29?

23 A. Yes. It would be a lot shorter bore. Yep.

24 Q. Okay. And what issues do you encounter when  
25 you're boring under like an asphalt highway like I-29?

1           A.   Fill issues, wet conditions.  Sometimes things  
2 are buried in there that the construction people have  
3 tossed in that should not be there.  There's numerous  
4 things that could arise from rerouting.

5           Q.   Okay.  And based on the exhibit that you've seen  
6 that Otter Tail is going to -- for their extension, is  
7 it your understanding they're going to try to stay up  
8 higher this way?

9           A.   Yes, to my understanding.

10          Q.   Okay.  Based on your knowledge of engineering  
11 and construction, what you want to do and what you  
12 actually do are sometimes two different things.  Would  
13 you agree?

14          A.   Yes.

15          Q.   So because they're looking to intersect so  
16 closely here, is it a possibility that if the course had  
17 to change, that the underground lines that are currently  
18 there could be crossed by Otter Tail?

19          A.   That's definitely a possibility.

20          Q.   And if they had to, they have -- my  
21 understanding, this is overhead; correct?

22          A.   Correct.

23          Q.   But this is underground?

24          A.   Yes.  Our -- our half is, yes.  Uh-huh.

25          Q.   Okay.  And this is underground?

1           A.    Yep.

2           Q.    And this is underground?

3           A.    Correct.

4           Q.    So potentially if they had to go any further or  
5 parallel to this line, they could intersect in multiple  
6 locations?

7           A.    Correct.

8           Q.    Now, is an intersection of underground line  
9 versus underground line different than an intersection  
10 -- or overhead and an underground?

11          A.    Yeah, quite a bit different.  We just ran across  
12 a situation in Grand Forks where somebody did a  
13 directional bore and they -- they nicked our underground  
14 cable, causing it for -- causing it to fail months  
15 afterwards still.  So it's very hard to find.  It's --  
16 again, you hit a live cable, it's -- it's dangerous.

17          Q.    And so to your knowledge, have they commenced  
18 any construction relative to their extension of service  
19 to the Love's Truck Stop?  When I say "they," I'm  
20 referring to Otter Tail.

21          A.    As far as I know, Otter Tail has not constructed  
22 anything yet.

23          Q.    Okay.  So there's nothing concrete to your  
24 knowledge that would be about their plans?

25          A.    Correct.

1 Q. Correct. They could change tomorrow. Is that  
2 your understanding or is that what you've seen in the  
3 engineering world?

4 A. Nothing's for sure until it's in, basically.

5 Q. Now, there was a question about whether or not  
6 you could extend single-phase or three-phase and what  
7 your intentions were. What was the request of the  
8 customer, to your knowledge?

9 A. They requested three-phase service.

10 Q. And so is that why you actually gave them the  
11 three-phase -- or the extension of service on the  
12 three-phase line versus the single-phase?

13 A. Correct.

14 Q. But again, it wasn't because the three-phase  
15 wouldn't be atypical -- excuse me -- the single-phase  
16 wouldn't be atypical, it was just that you were doing  
17 what the customer had asked for?

18 A. Correct.

19 Q. And would an extension off a single-phase  
20 service like you propose be more typical than a  
21 step-down transformer off a -- or a step-down -- excuse  
22 me -- off of a -- or excuse me -- a transmission line?

23 A. Oh, yes. Yes, it would.

24 Q. Quite extremely different?

25 A. Yes.

1 Q. Would you agree? I mean, not even on the same  
2 spectrum?

3 A. Correct.

4 Q. And cost-wise, in order for you to actually  
5 extend the single-phase service, you said, would almost  
6 be like a third of what it would have cost for the  
7 three-phase?

8 A. Correct.

9 Q. For Otter Tail to extend service off of that  
10 transmission line, how costly is that?

11 A. Quite a bit costly. I couldn't venture to  
12 guess. I probably would be wrong. But it would be  
13 extremely expensive, I would think.

14 Q. Okay. And that's, again, very atypical for  
15 someone to use a transmission line versus a distribution  
16 line in order to feed a service?

17 A. For one service, correct.

18 Q. Because would it require its own designated  
19 substation?

20 A. Yeah, a -- yes.

21 Q. Okay. And so the line that you guys are  
22 actually intersecting on -- that you would have to  
23 intersect is a distribution line -- I mean, excuse me --  
24 a transmission line; correct?

25 A. Correct. Yeah, there's no services off of that

1 line.

2 Q. Okay. So that's not a distribution that Otter  
3 Tail owns that's running there?

4 A. No.

5 Q. Now, you indicated that you attended at least  
6 one city council meeting relative to the issue of the  
7 franchise. To your knowledge, did Nodak Electric ever  
8 submit a formal request or application for a franchise  
9 from the city?

10 A. To my knowledge, no. I -- I went there to  
11 inquire about what it would take to get a franchise with  
12 the city and so...

13 Q. Okay.

14 A. But other than that, the subsequent  
15 conversations I wasn't privy to.

16 Q. Okay. And in fact, was it likely that they  
17 didn't seek a franchise out of the gate because they  
18 believe they had a service area agreement that would  
19 apply to this?

20 A. I -- I don't know what their thoughts were.

21 Q. Okay. And that may be something Mylo can  
22 answer?

23 A. Yeah. Yeah.

24 Q. Okay. So to your knowledge, though, you never  
25 submitted anything other than, you know, you approached

1 the city about what it might take to get a franchise?

2 A. Correct. It was just an inquiry.

3 Q. Okay. And to your knowledge, they never  
4 officially ruled on any such request?

5 A. No. Not at all.

6 Q. Now, do you operate other facilities or services  
7 in other cities without a franchise?

8 A. Without a franchise?

9 Q. Yes.

10 A. Yeah. Yeah.

11 I'd have to think about that. I'm not sure.

12 That might be --

13 Q. Okay.

14 A. -- a Mylo question too.

15 Q. Wonderful.

16 MS. RADERMACHER: I have no further questions.

17 THE WITNESS: Sorry.

18 MS. RADERMACHER: I have no further questions  
19 for the witness. Thank you.

20 ALJ DAWSON: Mr. Sanderson.

21 MR. SANDERSON: Thank you.

22 RE CROSS EXAMINATION

23 BY MR. SANDERSON:

24 Q. Mr. Breidenbach, I want to follow up on a couple  
25 questions and responses that you gave. First, I'd like

1 to know and you explained to the Commission how you  
2 gained your knowledge regarding whether or not Otter  
3 Tail has a permit from the DOT to bore under I-29?

4 A. I -- I do not know.

5 Q. Okay. Have you ever spoken to Tyler Jacobson,  
6 the engineer, about whether Otter Tail has a permit to  
7 bore under I-29?

8 A. No, I have not.

9 Q. Have you ever contacted the DOT to inquire or  
10 check what kind of permit they have?

11 A. No, I did not.

12 Q. Okay. And are you, in fact, aware that Otter  
13 Tail obtained a permit in 2020 to bore under I-29?

14 A. No, I wasn't.

15 Q. Are you aware that the DOT extended that permit  
16 into 2021 to bore under I-29?

17 A. No.

18 Q. Okay. So your -- just so I'm clear, you had no  
19 basis for your testimony about whether or not Otter Tail  
20 has any permit to bore under I-29 or what that permit  
21 would entail?

22 A. I did not have any -- any knowledge of their  
23 permit.

24 Q. Okay. Let's move on. You were asked about --  
25 you went to the city council meeting and inquired about

1 obtaining a franchise specifically to serve Love's Truck  
2 Stop in the McFarland's Addition; correct?

3 A. I don't know if that was the only reason, but I  
4 specifically went there to ask if Nodak could receive a  
5 franchise or what it would take to get a franchise.

6 Q. Prior to learning about the Love's Truck Stop  
7 that was going to be constructed into the McFarland's  
8 Addition and the annexation, had Nodak ever approached  
9 -- let's start with, had you ever approached the City of  
10 Drayton to obtain a franchise?

11 A. I hadn't, no.

12 Q. Okay. But what we do know, you approached the  
13 City of Drayton at the June 10th, 2019, city council  
14 meeting, inquiring about a franchise to serve Love's  
15 Truck Stop in McFarland's Addition; correct?

16 A. Correct.

17 Q. And since that time, the City of Drayton has  
18 never granted Nodak a franchise to serve Love's Truck  
19 Stop in the city of Drayton; correct?

20 A. Correct.

21 Q. Okay. I want to back up now to the question you  
22 were just asked, but I believe in response to -- to  
23 Commissioner Kroshus's questions about other cities  
24 where you serve, your testimony was you do have a  
25 franchise in those cities where you serve in city

1 limits?

2 A. Yes.

3 Q. Okay. Then in response to Commissioner  
4 Kroshus's question about having the rug pulled out from  
5 under you, that you could lose your facilities, just to  
6 be clear, Nodak has no facilities in McFarland's  
7 Addition that it will lose if Otter Tail service is  
8 extended to serve Love's; correct?

9 A. I don't know that.

10 Q. Well, will Otter Tail's service to Love's,  
11 extension to Love's Truck Stop, take away an existing  
12 customer that Nodak is providing service to?

13 A. Not an existing customer.

14 Q. Okay. Yep. Will Otter Tail's extension of  
15 service interfere with any service Nodak is currently  
16 providing to any existing customer?

17 A. Not that I'm aware of.

18 Q. Okay. And, for example, we're looking at the  
19 farmstead to the west of McFarland's that you provide  
20 three-phase service?

21 A. Correct.

22 Q. If Nodak -- excuse me. If Otter Tail runs its  
23 extension from the east side of I-29 to Love's Truck  
24 Stop, will that in any way impact that customer on the  
25 west side of McFarland's that's receiving service?

1           A. It would -- well, it would impact Nodak from the  
2 standpoint of it's a lost load that we would not have.

3           Q. And, Mr. Breidenbach, I guess maybe my -- I  
4 apologize. My question probably was not clear.

5           You're currently providing three-phase service  
6 to that customer; correct?

7           A. Correct. Yes.

8           Q. And hypothetically, if Otter Tail runs  
9 three-phase service to Love's Truck Stop and begins  
10 serving that Love's customer, will the existing grain  
11 bin facility on the west side lose service?

12          A. No.

13          Q. Will your service have to be shut off to that  
14 customer because Otter Tail's providing service to  
15 Love's Truck Stop?

16          A. No.

17          Q. Will that existing customer's service be  
18 impaired in any way by Otter Tail's extension to Love's  
19 Truck Stop?

20          A. Not that I'm aware of.

21          Q. Would Otter Tail's extension to Love's Truck  
22 Stop prevent Nodak from running three-phase service to a  
23 new customer to the west of that facility?

24          A. No, not that I'm aware of.

25          Q. Okay. And just so we're clear, would Otter

1 Tail's extension of service from east side of I-29  
2 interfere with any service Nodak is currently providing  
3 to any customer?

4 A. No. Just future services.

5 Q. Okay. Now, again, when I kind of started this,  
6 I want to go back to that rug pulled out or losing. You  
7 have no infrastructure in place in McFarland's Addition  
8 that will be taken by Otter Tail or the City of Drayton;  
9 correct?

10 A. As far as I know we don't.

11 Q. Okay. Otter Tail's extension from the east side  
12 of I-29 to Love's Truck Stop will not impair your  
13 single-phase underground line on the south side of  
14 McFarland's; correct?

15 MS. RADERMACHER: Your Honor, it would call for  
16 speculation. We don't know if it's going to impair it  
17 or not until it's constructed. Clearly, there's a  
18 single-phase line going through. We don't know what's  
19 going to happen with that line should this matter go  
20 through. So I think it calls for speculation on the  
21 part of the witness.

22 ALJ DAWSON: The response?

23 MR. SANDERSON: First, that's an improper  
24 objection, but -- to speaking objections. But more  
25 importantly, Judge, the proposed service, the question

1 was, will it be a taking? Will Otter Tail or the city  
2 take that line? That was the question. Not will it  
3 cross, will it impact? Will it specifically take that  
4 line. And I can rephrase the question if you'd like.

5 ALJ DAWSON: Could you please rephrase?

6 MR. SANDERSON: I certainly will.

7 BY MR. SANDERSON:

8 Q. Otter Tail's proposed extension that you  
9 understand, Mr. Breidenbach, coming from the east side  
10 of I-29 to serve Love's, are they taking any portion of  
11 the existing single-phase line to serve?

12 A. They're not taking the existing line that I'm  
13 aware of.

14 Q. Okay. They're not tying in or using that line  
15 to serve the proposed Love's Truck Stop, to your  
16 knowledge; correct?

17 A. Correct.

18 Q. Okay. And your testimony is could it interfere  
19 is if -- if during construction they hit your line. Is  
20 that what you're saying?

21 A. It's possible.

22 Q. Okay. It's certainly possible.

23 A. Yeah.

24 Q. But what you know is if design -- if constructed  
25 as designed, it's not going through or hitting your

1 underground line, it's going under your overhead line;  
2 correct?

3 A. As far as what I was told here. And the permit  
4 I have not seen so I don't know where that is crossing.

5 Q. So any testimony you have that it's possible it  
6 could impact would be based on hypothetical speculation  
7 that during construction it could -- the construction  
8 process could impact your line?

9 A. Correct. That's possible.

10 Q. Okay. And so I'm clear, and kind of again back  
11 to this rug pulling out line of questioning, Otter Tail  
12 is not taking any existing service line from Nodak, to  
13 your understanding?

14 A. Not any existing service line.

15 Q. Okay. And Otter Tail's extension will not  
16 impact or take away any existing customers that Nodak is  
17 currently providing service to; correct?

18 A. Not currently providing but future customers.

19 Q. Okay. And future customers would all, again, be  
20 based on speculation?

21 A. Yes.

22 Q. Okay. Mr. Breidenbach, I have no further  
23 questions. Thank you.

24 THE WITNESS: Thank you.

25 ALJ DAWSON: Mr. Johnson?

1 MR. JOHNSON: No questions.

2 ALJ DAWSON: Commissioner Kroshus?

3 COMMISSIONER KROSHUS: No questions.

4 ALJ DAWSON: Commissioner Fedorchak?

5 COMMISSIONER FEDORCHAK: No.

6 ALJ DAWSON: Christmann?

7 COMMISSIONER CHRISTMANN: Your Honor, I do.

8 ALJ DAWSON: Proceed.

9 COMMISSIONER CHRISTMANN: I forgot to ask this  
10 last time but you testified that there -- because it was  
11 less than, I think, 600 feet, it's only like 350 feet,  
12 there was no line extension charge, or some term such as  
13 that; correct?

14 THE WITNESS: Correct. No upfront cost.

15 COMMISSIONER CHRISTMANN: Okay. No upfront  
16 cost. But then your Exhibit 3 shows a summary of  
17 project costs of \$19,000. What's the difference there?  
18 What's the difference between upfront costs and project  
19 costs?

20 THE WITNESS: Okay. So our policy basically is  
21 the first 600 feet, there's no upfront cost. Anything  
22 over that is -- there's costs associated with that. But  
23 there's also a annual minimum that I explained to you.

24 COMMISSIONER CHRISTMANN: Yes.

25 THE WITNESS: It's \$2,500 for the first five

1 years. That adds up to about \$12,000.

2 What we do, for the total investment, we don't  
3 count the transformer because the transformer is  
4 something that we can reuse and move around and stuff  
5 like that. So if a customer moves in and says, hey, put  
6 in line service to us and we do that and then, all of a  
7 sudden, he says, oh, we provided the first 600 feet or  
8 the first chunk of that at no cost, there's no way to  
9 re-get our investment with the five-year \$2,400 that  
10 would cover that construction cost basically that we've  
11 done already. He'd still have -- he'd have to sign a  
12 contract or they would have to sign a contract for that  
13 five years and 2,400.

14 COMMISSIONER CHRISTMANN: So --

15 THE WITNESS: Our investment would be covered by  
16 that.

17 COMMISSIONER CHRISTMANN: So as long as they  
18 have that minimal amount of service that you said that a  
19 facility like this would easily hit --

20 THE WITNESS: Not a problem, yep.

21 COMMISSIONER CHRISTMANN: -- then Nodak will  
22 absorb this 19,000 out of that? This isn't in addition  
23 to that; correct?

24 THE WITNESS: Correct.

25 COMMISSIONER CHRISTMANN: Okay. Thanks for

1 explaining that.

2 THE WITNESS: Uh-huh.

3 ALJ DAWSON: Any further questions?

4 MS. RADERMACHER: No further questions.

5 MR. SANDERSON: Nothing further.

6 ALJ DAWSON: Seeing no further questions, you  
7 may step down.

8 THE WITNESS: Thank you.

9 ALJ DAWSON: We'll just keep going.

10 MS. RADERMACHER: So what's the logical stopping  
11 point? 10:45?

12 ALJ DAWSON: It's probably about ten minutes to.

13 MS. RADERMACHER: Okay.

14 ALJ DAWSON: About 15 minutes from now.

15 MS. RADERMACHER: Wonderful. Thank you.

16 ALJ DAWSON: You may call your next witness.

17 MS. RADERMACHER: I would call Mylo Einarson.

18 ALJ DAWSON: Mr. Einarson, you were here for my  
19 previous admonitions as to perjury; correct?

20 MR. EINARSON: Correct.

21 ALJ DAWSON: Do you understand what perjury  
22 is --

23 MR. EINARSON: I do.

24 ALJ DAWSON: -- and the penalties for it?

25 MR. EINARSON: Yes.

1 ALJ DAWSON: Understanding so, do you promise or  
2 swear that the testimony that you're about to give will  
3 be the truth, the whole truth, and nothing but the  
4 truth?

5 MR. EINARSON: I do.

6 ALJ DAWSON: You may begin.

7 MS. RADERMACHER: Thank you.

8 **MYLO EINARSON,**

9 being first duly sworn, was examined and testified as  
10 follows:

11 DIRECT EXAMINATION

12 BY MS. RADERMACHER:

13 Q. Can you please state your name for the record?

14 A. Mylo Einarson.

15 Q. Okay. And can you spell the first and last name  
16 just for the sake of spelling?

17 A. M-Y-L-O, last name is Einarson, E-I-N-A-R-S-O-N.

18 Q. Okay. And what is your current occupation?

19 A. I'm the president and CEO at Nodak Electric  
20 Cooperative.

21 Q. And how long have you been the president and CEO  
22 of Nodak?

23 A. About nine and a half years now.

24 Q. And prior to assuming that position, did you  
25 hold any other positions with Nodak Electric?

1 A. No.

2 Q. What was your occupation or kind of trade before  
3 you ended up at Nodak?

4 A. For just shy of 20 years, I was the city  
5 administrator in Grafton where we had an electric  
6 utility so I ran that as well. And then I was the  
7 president of Northern Municipal Power Agency and was on  
8 Minnkota's board of directors for 12 years.

9 Q. Okay. And what is the extent of your education?

10 A. I've got a bachelor of accountancy degree from  
11 the University of North Dakota and I'm a CPA.

12 Q. Okay. And do you maintain your certification as  
13 a CPA?

14 A. I do.

15 Q. And what does it require to maintain that  
16 certification?

17 A. I just need to file documents and pay the fees,  
18 basically. Because I don't practice in public practice,  
19 I don't have to do the annual continuing education  
20 requirements. I do them as a matter of course but it's  
21 not reported.

22 Q. Okay. And so in addition to kind of your duties  
23 as the president and CEO, you must work with numbers too  
24 at the cooperative?

25 A. Yes.

1 Q. Okay. And what are some -- if you could just  
2 briefly describe for the Commission and me what your job  
3 duties essentially entail at Nodak Electric?

4 A. I basically have to lead the entire  
5 organization, make sure that -- that policy that the  
6 board of directors has established is followed. We  
7 recommend policies to the board of directors, advise the  
8 direct reports in the different departments that I have.  
9 Basically, runs the gamut.

10 Q. Okay. And I think one of the questions asked of  
11 Mr. Breidenbach was who kind of oversees, like, service  
12 area agreements and whether or not those are being  
13 enforced. Would that kind of fall on you?

14 A. It's kind of a -- a mix. So in most situations,  
15 south end of Grand Forks, for example, if there's going  
16 to be a new line installed, the engineers themselves  
17 would know, based on the service area agreement, it  
18 falls on our side or on Xcel's side. If there's any  
19 negotiations or changes to those agreements, that would  
20 fall on me.

21 Q. Okay. And so you're familiar with the service  
22 area agreement between Otter Tail and Nodak Electric  
23 relative to the city of Drayton?

24 A. Yes.

25 Q. And you would also be aware of the service area

1 agreement that's relative to other facilities in which  
2 you serve in the Nodak territory; is that correct?

3 A. Yes.

4 Q. Okay. So before I get to the service area  
5 agreement, can you just tell me a little bit about Nodak  
6 Electric and what its territory consists and where it  
7 serves?

8 A. We are a member-owned electric cooperative in  
9 northeastern North Dakota. We serve basically from the  
10 Canadian border to south of Hillsboro and the Red River  
11 to just past Devils Lake. We've got about 9,000 square  
12 miles of service area. We sell about 1.2 billion  
13 kilowatt hours of electricity and about \$110 million in  
14 sales annually.

15 Q. Okay. And does your load, is that -- what would  
16 you say a commercial load -- or commercially, what makes  
17 up your percentage of membership?

18 A. Unlike most electric cooperatives, we are more  
19 commercial than residential. We're about 65 percent  
20 commercial, industrial load.

21 Q. Okay. And does that kind of harken back to your  
22 territory and what kind of municipalities, etcetera,  
23 that your territory encompasses?

24 A. I'm not sure I understood that question.

25 Q. So some of the -- you said that other -- unlike

1 other rural cooperatives, a lot of the rural  
2 cooperatives are very rural and have no major  
3 municipalities within their borders.

4 A. Right.

5 Q. Nodak actually has some pretty significant towns  
6 within its borders; is that correct?

7 A. Yes, we do.

8 Q. And what towns, so just to kind of identify, are  
9 located in your area?

10 A. Devils Lake, Grand Forks, Grafton, Cooperstown,  
11 Drayton, Pembina.

12 Q. Okay. And according to Mr. Breidenbach's  
13 testimony, it appears that you serve quite a few  
14 municipal customers within those cities?

15 A. We do.

16 Q. Grand Forks, it sounds like you have about  
17 50 percent of what would constitute Grand Forks?

18 A. Yeah. I wouldn't say it's 50 percent, but it's  
19 -- it's the southern part of the town and the western  
20 part of the city as well.

21 Q. Okay.

22 A. By load, it very well could be 50 percent. We  
23 have a lot of the -- with the industrial park and the  
24 Alerus Center and the Target stores, Menards, all those  
25 kind of stores. So it's a fairly significant size.

1 Q. And in those municipalities that you're talking  
2 about, do you hold franchises for every single one of  
3 those municipalities?

4 A. No. We have franchise agreements, one with  
5 Otter Tail that's a master agreement. It's four pages  
6 long, I think, four or five, with maps that encompass  
7 the areas that we would butt up against each other. We  
8 have one with Xcel Energy for the Grand Forks and -- and  
9 Thompson areas. But we serve many other municipal  
10 customers where we don't have a franchise agreement.

11 Q. Okay. And do you know some cities offhand that  
12 you don't have franchise agreements for?

13 A. We serve a number of customers in Grafton, which  
14 is a municipal utility; Cooperstown; Devils Lake; towns  
15 like that. There's a number of them.

16 Q. And how many members would you say that Nodak  
17 has currently, give or take?

18 A. We have about 12,000 members, 22,000 meters.  
19 22,000 service locations.

20 Q. Now, do you recall Nodak Electric being  
21 approached in about February of 2019 regarding a  
22 proposed Love's Truck Stop?

23 A. Yes. When I first heard about it -- when I  
24 first heard about it, it was a phone call from an Otter  
25 Tail representative telling me that there was a new

1 service going in west of the interstate. And we didn't  
2 have much in the area, was how it was portrayed, so they  
3 felt that it was going to be their -- their load.

4 At that point, I had not heard about the -- the  
5 truck stop yet. So then I inquired and found out that a  
6 month or two before that, our engineering department had  
7 been contacted by the consulting engineer for Love's.

8 Q. Okay. And so you kind of put two and two  
9 together and found out that this load that you had heard  
10 about from Otter Tail was, in fact, the Love's Truck  
11 Stop?

12 A. Yes.

13 Q. And so the initial contact from Nodak Electric  
14 appeared to be from CEI, the engineering firm for Love's  
15 Truck Stop?

16 A. Correct.

17 Q. But the first contact you had with anybody  
18 relative to this was actually from Otter Tail?

19 A. Correct.

20 Q. Okay. So when Otter Tail said, hey, we're going  
21 to serve this potential load, did they tell you exactly  
22 where it was located at?

23 A. General -- general spot. Just across the  
24 interstate by the interchange.

25 Q. Okay. And what was Nodak's response relative to

1 the service area and what exactly you had for facilities  
2 in that area?

3 A. When I looked into it, I -- I responded back the  
4 next day, I believe it was, basically with that, no, I  
5 think that's our service territory, we've got a lot of  
6 capacity in that area, I think we're going to serve that  
7 load.

8 Q. Okay. And at some point when you learned where  
9 exactly the property was going to be located, did you go  
10 back to your service area agreement then and say, hey,  
11 this is Nodak's under the service area agreement?

12 A. Yes.

13 Q. And now relative to the service area agreement,  
14 this agreement dated back to about 1968, or the one that  
15 you have been operating currently off of is from 1968?

16 A. Correct.

17 Q. And the 1968 version is basically a redraft of,  
18 potentially, one in 1960. Is that accurate?

19 A. I think it was 1958.

20 Q. Okay.

21 A. There was an initial agreement in 1958. Maps  
22 were drawn and attached to that agreement in 1960. And  
23 then in 1968 a new agreement was -- was signed, and it  
24 referenced the previous maps from the old agreement.

25 Q. Okay.

1           A. Those two agreements were very, very similar.  
2           It's just one sentence was different.

3           Q. Okay. And do you recall by chance what that  
4           sentence was?

5           A. Yeah. It was -- in the previous agreement, the  
6           first agreement, the -- when these maps were drawn, the  
7           service area was drawn some distance outside the city  
8           limits so that the investor-owned utility -- in this  
9           case Otter Tail -- had the ability to grow, but then we  
10          had lines close to the city.

11                     In the initial agreement, what it said was that  
12          when a city annexed property where we had facilities  
13          inside that agreement, inside that area, we would sell  
14          those facilities to Otter Tail. The '68 agreement  
15          basically said we would negotiate and decide whether or  
16          not we wanted to sell those, not a foregone conclusion  
17          that we would. That was the only difference in the  
18          agreement.

19          Q. Okay. So at what point during this -- you know  
20          when these discussions occurred did the property  
21          actually get annexed inside of the city?

22          A. I guess we heard today it was in August of 19 --  
23          it was sometime after the discussions had already  
24          started between us and Otter Tail.

25          Q. Okay.

1           A. We started our discussions in -- in the winter,  
2 February, March time frame. And it was annexed later on  
3 that fall.

4           Q. Okay. Now, according to Mr. Breidenbach's  
5 testimony, you've had those facilities in that area  
6 since approximately 19 -- the 1940s?

7           A. I believe so.

8           Q. And so that property, the line in particular --  
9           MS. RADERMACHER: If we could go back to  
10 Exhibit 2, please.

11          Q. So the property we see -- or the line we see  
12 going through what has now been labeled as McFarland's  
13 Addition, do you know approximately when that line was  
14 put in?

15          A. I'm not aware of -- I know it was updated in, I  
16 think, 2009. I'm not aware of initially when it was --  
17 when it was first constructed. I believe that was, we  
18 heard earlier, in the '40s.

19          Q. Okay. And so were you notified at all that when  
20 this was being annexed, that this -- that at least one  
21 of your distribution lines was being annexed inside city  
22 limits?

23          A. No.

24          Q. Did you have any input at all in the annexation  
25 and the fact that this line was now being annexed?

1           A.    No.

2           ALJ DAWSON:   About a minute.   About a minute  
3 until we should break.

4           MS. RADERMACHER:   Well, then I'm wondering maybe  
5 if this is --

6           ALJ DAWSON:   We can break right now.

7           MS. RADERMACHER:   Yes.   I was going to say maybe  
8 this is a logical stopping point.

9           ALJ DAWSON:   Seemed like it.   So we'll take a  
10 break here until no later than a quarter after.   I would  
11 guess everybody should be here and ready to go at a  
12 quarter after.

13           COMMISSIONER FEDORCHAK:   That might be a little  
14 ambitious.   Maybe if we aren't here by then, we'll just  
15 wait until we are here.

16                           (Laughter)

17           ALJ DAWSON:   Yeah, that would make the best --

18           UNIDENTIFIED SPEAKER:   Please understand this  
19 isn't something that's under our control.

20           MS. RADERMACHER:   Not a problem.

21                           (Recess)

22           ALJ DAWSON:   Well, we're back on the record and  
23 it's about half past 11.   And my expectation is, is if  
24 we aren't done, we'll break at 1 p.m. for lunch after  
25 the legislators have eaten theirs, but they should

1 probably be gone by then, but we'll break about then  
2 unless we can see the end in sight.

3 So with that, we have Mylo Einarson on the stand  
4 and we'll continue where we stopped.

5 Ms. Radermacher.

6 MS. RADERMACHER: Thank you, Your Honor.

7 BY MS. RADERMACHER:

8 Q. So prior to break, we were kind of discussing  
9 the service area agreement and kind of that aspect. So  
10 is it your understanding or belief that there's a  
11 service area agreement between Otter Tail and Nodak that  
12 is relative to the Love's Truck Stop property?

13 A. Yes.

14 Q. And is that the same 1968 agreement that you  
15 were referring to relative to all the properties that  
16 you have in your service territory involving Otter Tail?

17 A. Yes. Most of them.

18 Q. Okay. And so is it my understanding that it's  
19 really the maps that differ relative to each  
20 municipality versus the actual content of the contract?

21 A. Right. So the contract is just one, like I  
22 said, 4- or 5-page contract. And then with each smaller  
23 municipality, there would be a map that was drawn at the  
24 time some distance outside the city limits of the  
25 community, and those maps are attached.

1 Q. Okay. In support of the complaint that was  
2 filed with the PSC, do you know if that service area  
3 agreement was filed as an addendum to the complaint?

4 A. For us? We filed the relevant portions of it,  
5 yes.

6 Q. Okay.

7 A. Just the one map, not all the maps of the other  
8 towns around that are irrelevant.

9 MS. RADERMACHER: May I approach, Your Honor?

10 ALJ DAWSON: Yes, you may.

11 Q. I just handed you what's been labeled as Nodak  
12 6. Is that the relevant portions of the service area  
13 agreement that you were just discussing?

14 A. Yes.

15 Q. And so you talked about that there's several  
16 maps that were attached. Did you just include just the  
17 Drayton map with your filing?

18 A. Yes.

19 Q. Is the document that I just handed you, is it  
20 your knowledge the one that was also submitted in  
21 support of the complaint?

22 A. To my knowledge, yes.

23 Q. Okay.

24 MS. RADERMACHER: And if we could bring up  
25 Exhibit 6, but the last page of Exhibit 6, please.

1           Thank you. This is it right here.

2           Q. So based on the last page of Exhibit 6, is that  
3 the map that's relative to the city of Drayton?

4           A. Yes.

5           Q. And can you just tell the commissioners what  
6 exactly we see in this map?

7           A. Well, we see the -- the city limits of Drayton  
8 as they existed back in 1960. I think it was 1960, '61.  
9 And then the line that was drawn outside the city limits  
10 and the hatched line, meaning to demark that area from  
11 the balance of the area.

12          Q. Okay. And so we see the city of Drayton as it  
13 was back then. And so the hatched areas, what is that  
14 defining?

15          A. The stuff on the inside where the red is, that  
16 would be Otter Tail's portion, and then anything outside  
17 that line would be Nodak.

18          Q. Okay. And so the Love's Truck Stop where it's  
19 currently located at, now called McFarland's Addition,  
20 where is that in relation on this map to the city of  
21 Drayton?

22          A. On the northwest corner of that -- the map is in  
23 improper orientation so north is to the right. There we  
24 go. So in the northwest corner of that mapped-out area,  
25 that's the intersection of the I-29 and Highway 66. The

1 subject property is going west of that between the  
2 interstate and that county road.

3 Q. Okay.

4 MS. RADERMACHER: May I approach the exhibit,  
5 Your Honor?

6 ALJ DAWSON: Yes. And please try to describe  
7 what you're pointing at in ways that could be understood  
8 if you didn't look at the map.

9 MS. RADERMACHER: Wonderful. Thank you.

10 Q. So I'm just -- because, again, I can't tell you  
11 in relation to the map where it's located so I want you  
12 to kind of walk me through. Now, I'm referring to the  
13 red hatched line here. Now, this dark line as I'm  
14 pointing out here that's kind of surrounding, it says  
15 Drayton, this was the city of Drayton as it was platted  
16 at the time of this?

17 A. I believe so, yes. That's the city limits on  
18 the map as of 1960.

19 Q. Okay. And where is I-29 in relation to this?  
20 Is that this curving thing that's right here?

21 A. Nope. Right there in the corner where you just  
22 had your finger --

23 Q. Right here?

24 A. Right there. It goes north and south right  
25 there.

1 Q. Okay.

2 A. That's the northwest corner of the -- of the  
3 mapped out area for Drayton.

4 Q. Okay. So based on where I'm pointing where this  
5 red hatched line is, is this to be the western border of  
6 I-29?

7 A. So one of the things -- so this was all drawn by  
8 hand way back when. As you can see on there, it's --  
9 it's not as accurate as what you would be able to do  
10 today. It looks, at the top of that intersection, like  
11 it's in the middle of the road, but then the line isn't  
12 drawn very straight. So as you go down farther, it  
13 looks like it's on the west side of the road.

14 Q. Okay.

15 A. Those are some areas where we've had  
16 conversations between Nodak and the other parties in our  
17 service area agreements. We just had one approved by  
18 the Commission a couple years ago where we identified  
19 exactly where a line is north of Thompson with Xcel  
20 Energy, because of that specific reason where it was  
21 unclear on a map like this of a small scale. But yes.

22 Q. But am I safe to say that the area that's to be  
23 served is on this side?

24 A. You're correct.

25 Q. Okay. And it's right -- and when I say area, so

1 we're looking at, we're in section 26. So we're in this  
2 portion of the west half of the west half, it looks  
3 like, of the southwest -- or northwest corner -- excuse  
4 me -- of section 26. Is that --

5 A. I don't know the legal description off the top  
6 of my head, but that's correct, yes.

7 Q. Okay.

8 A. It's right in that area.

9 Q. And so it would be right in this area, is your  
10 understanding?

11 A. Yes.

12 Q. So in prior maps that we have seen, it appears  
13 that there's at least a three-phase service that's to  
14 the west of this area which was -- that you're currently  
15 serving?

16 A. There's a three-phase service there, yes.

17 Q. Okay.

18 A. We also have a three-phase line bordering the  
19 property all the way along there.

20 Q. Okay. And in that area, is Otter Tail serving  
21 any consumers?

22 A. No.

23 Q. But Nodak currently is serving consumers. And  
24 were you -- are you serving consumers underneath the  
25 service area agreement or because it was considered a

1 rural area that you extended service in that particular  
2 direction?

3 A. We're serving members there because the --  
4 that's our service territory. Whether that's -- that's  
5 because it was granted to us by the Territorial  
6 Integrity Act.

7 Q. Okay. But you were -- you thought you belonged  
8 there and you're continuing to be under the impression  
9 that that's your service territory and that's kind of  
10 how -- what's dictated how you've proceeded to this  
11 point?

12 A. Yes.

13 Q. Is that safe to say?

14 A. We've made investments and -- under the  
15 assumption that this is our service territory.

16 Q. Okay. And so it sounds like you've continued to  
17 make improvements over the years because the original  
18 construction was sometime back in the 1940s; is that  
19 correct?

20 A. That's correct.

21 Q. And so in 2009, give or take, a lot of it was  
22 converted to underground and improvements made to the  
23 line at that point in time?

24 A. That's correct.

25 Q. And that was done under the belief not only that

1 it was your service territory; correct?

2 A. Right.

3 Q. But also that you were looking to further expand  
4 around that area?

5 A. Absolutely.

6 Q. So were there any conversations with Otter Tail  
7 about this being Nodak's service territory that you can  
8 recall?

9 A. I'm not -- at one point. We've had lots of  
10 conversations about it. That's why we're here.

11 Q. Yes.

12 A. We've talked about it. The conversation started  
13 when we first got a phone call from the Otter Tail  
14 representatives talking about the potential new load.  
15 And we've had several conversations about it since.

16 Q. And would you be willing to tell me what the  
17 content of those conversation -- what the timeline was  
18 and how we ended up getting here?

19 A. Sure. It started out just shortly after the  
20 initial contact with the Love's representatives or  
21 engineering representatives. First phone call was  
22 basically Otter Tail saying, there's going to be a new  
23 load here. We are planning to serve it. You don't have  
24 a lot in the area. The city is going to annex it so it  
25 will be ours.

1 I looked into it further. Called them back.  
2 That's our service territory. We made -- we've got a  
3 tremendous amount of capacity right there. We intend to  
4 seek serving it. That was my position on it.

5 There was then two Otter Tail representatives  
6 came to Nodak to sit down to talk to us about why they  
7 think that Drayton would want Otter Tail to serve the  
8 load, why they think they should be doing it. Then we  
9 also had a conference call with the mayor and with  
10 Love's and Otter Tail as well. Multiple conversations,  
11 I guess is what I'm trying to say.

12 Q. Okay. And so Otter Tail was aware almost from  
13 the outset what Nodak's position was relative to serving  
14 this load?

15 A. Yes.

16 Q. And did you at some point approach the City of  
17 Drayton regarding Nodak wanting to serve this load?

18 A. Yes. We -- what we did is initially Steve went  
19 to a city council meeting to talk to them about it,  
20 inquired about what the process might be for a  
21 franchise, if they would require one.

22 We also had our attorney write to the city  
23 attorney in Drayton, and the content of that letter  
24 basically was it's our service territory, we intend to  
25 serve it, we'd be happy to have a franchise agreement if

1 you -- if you want us to have one, but it's our plan to  
2 serve the load.

3 Q. Okay. And so did the city ever say to you, yep,  
4 you need to franchise?

5 A. No.

6 Q. Did you ever formally take up the matter of a  
7 franchise with the city?

8 A. No.

9 Q. And to your knowledge, did the city ever act on,  
10 at your request, a franchise request?

11 A. No.

12 Q. So what part of this were you guys -- I mean,  
13 like what part of this process, this area being annexed  
14 in, etcetera, were you made privy to by the city?

15 A. I'm not exactly sure I understand the question.  
16 The -- the mayor called me, basically saying that the --  
17 that they intended to annex the property, Love's wanted  
18 Otter Tail to serve their load, and whatever Love's  
19 wants, that's what we want because it's really important  
20 to us that this service station gets built here.

21 Q. Okay. And did you ever have an opportunity to  
22 discuss with Love's what exactly it is that they wanted?

23 A. After that initial conversation with the mayor,  
24 he initiated a conference call between he and I and a  
25 Love's representative. I think he's going to testify

1 later on today. And during that conversation, that was  
2 -- the mayor wanted me to explain to Love's why I felt  
3 that it was our service territory and hear from Love's  
4 why they felt they should be able to pick and choose  
5 which -- who their service provider is.

6 So we had a conversation about how service  
7 territories work in North Dakota and that we've made an  
8 investment there and we have members to protect that  
9 investment that we've made on their behalf so we do feel  
10 it's our service territory.

11 After that -- or at the end of that  
12 conversation, he asked me to provide them with a  
13 breakdown of a cost summary of what the monthly power  
14 bill might look like.

15 Q. Okay. And so you submitted that cost estimate  
16 at some point to Love's service station or the truck  
17 stop?

18 A. Yes. The next day.

19 Q. Okay. And so Steve testified that he was not  
20 aware that they even had actually platted the area where  
21 some of your facilities were located at into what is  
22 McFarland's Addition. At what point were you made aware  
23 that they were going to actually plat and annex that  
24 property?

25 A. I received a phone call from -- from Jeremy from

1 Otter Tail informing me that Drayton had planned to  
2 annex the property and they had -- they were planning to  
3 serve it. Somewhere middle of -- I've got it in my  
4 notes if you want to know the actual date of the phone  
5 call, but it was middle of '17 -- or '19.

6 Q. Okay. If you would refer to your notes to  
7 refresh your recollection.

8 A. June of 2019.

9 Q. Okay. And so June of 2019 was a conversation  
10 with Otter Tail, not the City of Drayton, relative to  
11 the annexation of the property?

12 A. Correct.

13 Q. Did the City of Drayton come to you about the  
14 annexation of the property?

15 A. No. The contact I had with the city was the  
16 mayor called to tell me that Love's wanted Otter Tail to  
17 serve the -- the service station, and whatever Love's  
18 wanted was what the city wanted.

19 Q. Okay. So at no point was there any discussion  
20 relative to the city at least as to the facilities that  
21 were actually intersecting McFarland's Addition that was  
22 now being brought into the city?

23 A. No.

24 Q. And so they didn't kind of give Nodak a head's  
25 up that that was going to happen?

1           A.   No.

2           Q.   So at no point -- just maybe I'm kind of  
3           pounding a dead horse here -- did the City of Drayton,  
4           to your knowledge, deny Nodak a franchise?

5           A.   I don't know how they could have denied it when  
6           we've never really requested it.

7           Q.   Okay.

8           A.   We've told them that we would certainly sign one  
9           if they wanted us to have one, if they would require it,  
10          but we've never formally requested a franchise  
11          agreement.  That would -- if we were to do that, that  
12          would come through me or our attorney, and that's not  
13          happened.

14          Q.   Okay.  And based on one of the maps that Mr.  
15          Breidenbach testified to, you guys have quite a few  
16          loads on the outskirts of the city of Drayton currently.  
17          Is that accurate to say?

18          A.   Yes.

19          Q.   And so further annexation of any property on the  
20          outskirts of Drayton could be detrimental to Nodak?

21          A.   Absolutely.

22          Q.   So you talked about that you kind of put some  
23          costs together.  If you were permitted to extend service  
24          to Love's Truck Stop, what portion of the costs of the  
25          new line extension would be passed on to Love's Truck

1 Stop?

2 A. Most likely zero. Steve explained earlier how  
3 that process works, is that we cover the first 600 feet  
4 of the line extension. The member is required to have a  
5 \$2,500 minimum each -- annually for five years. Just  
6 the meter charge on this account is almost \$2,500. So  
7 they have to use very little energy over that time  
8 period to cover that \$2,500 minimum usage. And if they  
9 meet that, then they don't pay any of it. We cover the  
10 entire cost.

11 Q. So the 19,000 plus change that Steve testified  
12 to, that would not be passed on in any way to Love's?

13 A. Correct.

14 Q. And you stated that you have -- that Nodak  
15 Electric has a policy relative to that line extension?

16 A. We do.

17 Q. And you indicated previously in your testimony  
18 that you kind of deal with the board and policy issues;  
19 is that correct?

20 A. Correct.

21 Q. Okay. And as part of preparation for this case,  
22 did you provide my office with a copy of the policy of  
23 the line extension?

24 A. Yes.

25 MS. RADERMACHER: May I approach, Your Honor?

1 ALJ DAWSON: You may.

2 Q. I've handed you what's been labeled as Nodak 7.  
3 Is that the new line extension policy that Nodak  
4 currently has in place?

5 A. Yes, it is.

6 Q. And that sets forth the policy you just  
7 reiterated regarding that that would have been --  
8 resulted in no cost to Love's?

9 A. Correct.

10 Q. Did you also -- so you said that you kind of put  
11 together a cost, you know, what it would cost Love's  
12 service station relative to the proposed load that you  
13 kind of projected with them. Did you draft an exhibit  
14 in conjunction with Steve Breidenbach on what those  
15 costs would be?

16 A. Yes.

17 Q. Okay. And how do you derive some of that  
18 information, just to give kind of a background?

19 A. A lot of it is from the consulting engineers,  
20 what they believe that the load will -- will look like.  
21 A lot of times we also see that Love engineers, but they  
22 have a tendency to overestimate things sometimes, so we  
23 look at existing customers, existing members that are  
24 similar to that kind of a load and base it based off of  
25 that. So we've got a truck stop in our service

1 territory that seems very, very similar to what this one  
2 would be, and we use those exact numbers from their  
3 previous power usage. So we use that. Then we also use  
4 our capital credit retirement rotation. We go through  
5 the accounting, basically.

6 Q. Okay. And not that it's particularly relevant,  
7 but just kind of one of those, you know, just for full  
8 explanation for the Commission, because it's not  
9 something they see from an IOU, what are capital  
10 credits?

11 A. At the end of the year, we have a net margin,  
12 what would be a profit from a profit company, but we're  
13 a not-for-profit so it's a net margin. Those net  
14 margins then are allocated back to each member based on  
15 how much energy they used, how much power they purchased  
16 from us. So everybody gets an allocation, their portion  
17 of that, whatever it might be, \$3 million in net margin  
18 we had at the end of the year.

19 At some point in the future we retire those  
20 capital credits by giving a credit on the bill or  
21 writing a check back to the member and retiring --  
22 basically, giving their share of the profits back, is  
23 what it amounts to.

24 That time period between when we allocate those  
25 margins and when we retire them, that's the cash flow

1 that we have to operate the business on for a period of  
2 time. So it can be -- right now we're running on a  
3 17-year capital credit rotation, which seems like a long  
4 time but it's quite short compared to most cooperatives.

5 Q. Okay. And so it essentially operates as a  
6 liability to some extent on the books of the cooperative  
7 because it's an obligation you end up having to pay back  
8 to the members regardless?

9 A. Right.

10 Q. So did you provide -- and I just kind of want to  
11 provide some background to the document. The document  
12 that I'm about to introduce as Nodak 8, was that a  
13 document that was provided specifically to Love's Truck  
14 Stop?

15 A. Can I see the document?

16 MS. RADERMACHER: Can I approach, Your Honor?

17 ALJ DAWSON: Yes, you may.

18 Q. So what's been listed or labeled as Nodak 8, is  
19 that kind of a projection that you use that you provided  
20 my office in contemplation of today's hearing?

21 A. To your office, yes.

22 Q. Okay. And at some point did you provide  
23 something similar or even like a paraphrased version of  
24 this to Love's Truck Stop?

25 A. No. We provided them a -- something that would

1 show their monthly bill and how much it would cost them  
2 and less the capital credits and etcetera. This is more  
3 of a -- basically showing you and the Commission that  
4 the -- the revenues that we would get back off of a load  
5 like this.

6 Q. Okay. And so in that exhibit, you reference  
7 kind of controlled versus uncontrolled loads. Can you  
8 tell me -- or rate. Can you tell me what that  
9 essentially -- I mean, I get -- what essentially would  
10 that entail?

11 A. Minnkota runs a very robust load control  
12 program. It's different than -- than the -- what's in  
13 the Basin system and different than many of the  
14 investor-owned utilities.

15 And so what they do is there's -- there's  
16 control periods where a member will reduce their usage  
17 voluntarily and they're able to -- to avoid a tremendous  
18 amount of demand cost based on that. So like a  
19 dual-fuel furnace, for example, is an automatic one  
20 where a signal gets sent out over the power lines and  
21 that electric furnace is shut off, a natural gas furnace  
22 or some sort of a backup furnace runs for that control  
23 period.

24 For a larger commercial and industrial loads,  
25 there's generation typically that would be engaged for

1 those periods, or sometimes it's just voluntary. We  
2 shut some things down. And those control periods can  
3 last four hours or six hours, but typically over a  
4 winter or summer season, they're not a very -- not very  
5 many hours.

6 But what it does, it creates value in the  
7 marketplace for our wholesale power provider because  
8 that's a demand that they don't have to show that they  
9 have capacity for. So it's a way of reducing the power  
10 bill from the consumer's perspective by a tremendous  
11 amount.

12 Q. Okay. But during those periods of time, they  
13 don't actually go without power, they have some other  
14 mechanism to continue to keep the lights on; correct?

15 A. Typically. So, for example, like a hospital,  
16 they have backup generation that's required by their  
17 regulators. We can send them a signal telling them that  
18 it's a control period, they turn their generation on for  
19 three hours, and then it goes back off. They're not  
20 without power. And in exchange for that, their demand  
21 costs are dramatically reduced.

22 Q. Okay. And so in a -- as we can see based on  
23 Nodak 8, if they were going to do some sort of control,  
24 they could see their power costs significantly reduced.  
25 Is that a correct statement?

1           A.    Exactly.

2           Q.    Okay.  And so can you just kind of briefly  
3 describe what we're looking at, particularly in the  
4 first page of Nodak 8, on the controlled side of things?

5           A.    It just identifies that in year one we are  
6 estimating \$57,000 retail charges to Love's; the capital  
7 credit allocation based on historically what our  
8 commercial, industrial rate classes are allocated; and  
9 then our power cost on that from our wholesale power  
10 provider.  The next line over is the cost of service.  
11 That's an allocation of expenses that we have for  
12 maintenance on the system.  And then the Nodak net  
13 revenue on the other side, \$5,024, that's the net  
14 revenue we would gain off of this that would go towards  
15 paying expenses or participating in investment like the  
16 backbone and the rest of the distribution lines and  
17 transmission lines, etcetera.

18          Q.    Okay.  So does the net revenue tend to increase  
19 after the initial investment or the line extension is  
20 recovered?

21          A.    It would.  After the initial \$20,000 is  
22 recovered, then the net revenue would obviously  
23 increase.

24          Q.    Okay.  And so is this a pretty decent load for  
25 Nodak, I mean the revenue-wise, if you were to get this

1 load?

2 A. Yes. It's -- you know, it's not a huge load by  
3 any stretch, but we've already made the investment to  
4 bring a significant amount of capacity to that specific  
5 spot. So the incremental investment to serve a load  
6 like this is very small compared to what it might be if  
7 we were going to serve a load that we don't have the  
8 investment already made. Because of the previous  
9 investment, it's a very, very good load for us because  
10 we've already made that investment.

11 Q. And that's kind of primarily why you -- is that  
12 why you expanded in the McFarland's Addition and in the  
13 surrounding area of Drayton, for that reason?

14 A. Certainly. I mean, you look up and down the  
15 I-29 corridor, coming south from the Canadian border,  
16 there's a lot of construction on the west side of the  
17 interstate. There's Bathgate, now Drayton, Manvel,  
18 Grand Forks. All the truck stops in Grand Forks are on  
19 the west side. There's -- get down to Hillsboro on the  
20 southern end of our service territory, there's a lot of  
21 construction happening now on the west side of the  
22 interstate. So it seems like a logical place to expand  
23 your service territory because there's -- if Drayton is  
24 going to expand, it's a likely place.

25 Q. Okay. And where is exactly the city of Drayton

1 in relation to like the Canadian border?

2 A. About halfway between Grand Forks and the  
3 Canadian border, roughly.

4 Q. Okay. Now, based on the already -- the  
5 investment that you've already made versus the  
6 investment that you would have to make to extend  
7 service, what would your rate of return be on this  
8 particular load?

9 A. Because, again, most of the investment's already  
10 been made, based on the incremental investment, we feel  
11 we could get a rate of return anywhere between 11 and  
12 40 percent, depending on whether it's a controlled or  
13 uncontrolled load.

14 Q. So, again, a desirable load to Nodak --

15 A. Yes.

16 Q. -- based on the numbers?

17 MS. RADERMACHER: May I approach, Your Honor?

18 ALJ DAWSON: Yes, you may.

19 Q. I've handed you what's been labeled as Nodak 9.  
20 Is that just kind of a spreadsheet that you did to kind  
21 of calculate out what the average rate of return would  
22 be?

23 A. Yes.

24 Q. And did you break that out again on whether or  
25 not that would be a controlled versus uncontrolled?

1           A.   Yes.   One page is controlled and the next one is  
2 uncontrolled.

3           Q.   And also relative to that particular exhibit,  
4 did you do kind of a summary that shows the breakdown of  
5 the -- kind of the first year of what the net  
6 contribution of costs after capital credits would be?

7           A.   Yes.

8           Q.   Okay.

9           MS. RADERMACHER:   May I approach, Your Honor?

10          ALJ DAWSON:   Yes, you may.

11          Q.   So I've just handed you what's been labeled as  
12 Nodak 10.  Is that the exhibit I was just referring to?

13          A.   Yes.

14          Q.   And what would the net contribution to costs be  
15 on that first year?

16          A.   \$5,313.

17          Q.   Okay.  So this would be, again, kind of based on  
18 the numbers and the cost of extension, it would be a  
19 profitable load?

20          A.   Right.

21          Q.   And those are the types of load that any  
22 electric service provider wants; is that correct?

23          A.   Absolutely.

24          Q.   Now, based on the cost of extension and based on  
25 your rates, do you think you would be competitive

1 relative to Otter Tail Electric in providing service to  
2 the truck stop?

3 A. Yes.

4 Q. Okay. And do you think that issue to some  
5 extent goes to the questions or issues now before this  
6 Commission?

7 A. Do I think it's relevant?

8 Q. Yes.

9 A. Do I think it's relevant that we would be  
10 competitively situated as a power provider?

11 Q. Yes.

12 A. Yes.

13 Q. And would go to kind of a wasteful duplication  
14 of services if you're able to provide the same service  
15 for similar costs with probably one-third of the  
16 extension investment than Otter Tail?

17 A. I absolutely believe that.

18 Q. So now in contemplation of today's -- or in  
19 preparing for today's hearing, did you end up  
20 discovering late yesterday that Nodak Electric actually  
21 has facilities -- excuse me -- I should say service, an  
22 actual service located inside the city limits of  
23 Drayton?

24 A. Yes.

25 Q. And how were you able to discover that?

1           A. We've seen maps that are all over the place as  
2 far as where the city limits are. So what I did is I  
3 started looking at county tax receipts, tax documents,  
4 that show whether or not properties are paying taxes to  
5 the city or not, and determined that the Cenex service  
6 station there that we had as a member for a number of  
7 years has been paying, as far back as you could see on  
8 the county tax website, you could see that they were  
9 paying city taxes. So then looked a little bit deeper  
10 and found that the property was annexed into the city  
11 in 2006.

12           Q. Okay. And was Nodak Electric serving that  
13 consumer well before 2006 when the property was annexed?

14           A. Since, I believe, 1989.

15           Q. And did at any point the City of Drayton contact  
16 you before annexing that property in?

17           A. Not that I'm aware of. That's before I was the  
18 CEO so I -- I don't have any firsthand knowledge of it,  
19 don't have any records that would tell me that Nodak was  
20 contacted.

21           Q. Okay. Was there actually, though, some kind of  
22 a scuttle that did occur or some kind of dispute, I  
23 should say, that may have surrounded this particular  
24 property and who should serve the load?

25           A. Yes. There was a scuttle between Nodak and

1 Otter Tail over who should serve the new service  
2 station. There was a -- some bulk tanks there that had  
3 a single-phase load and the new service station was  
4 going to be built. And Nodak ended up building it off a  
5 single-phase load with a phase converter.

6 Q. Okay. And so Nodak's served that load  
7 since 1989 when that facility actually went in?

8 A. Yes.

9 Q. Now, you indicated that you kind of had to do  
10 some digging in order to be able to determine exactly  
11 what property or facilities Nodak has in the city limits  
12 or not; is that correct?

13 A. Right.

14 Q. Have you been able to get any sort of definitive  
15 answers as to what other properties you may have inside  
16 city limits?

17 A. No. I asked Steve to reach out to the city  
18 auditor and get a map of the city limits, and the answer  
19 that we got was that Pembina County auditor has that.

20 Q. Okay. And so the city didn't provide you with  
21 what a current plat looks like for the city of Drayton?

22 A. No.

23 Q. And so you've gone to kind of going to county  
24 records and tax records to determine what could or could  
25 not be inside the city of Drayton?

1 A. Correct.

2 Q. Is that safe to say?

3 And it would be helpful to know for Nodak in  
4 determining what exact properties would need a franchise  
5 or not; is that correct?

6 A. Yes.

7 Q. So now you indicated, after some digging, that  
8 you were able to find a plat and an annexation relative  
9 to the Cenex station. And was that provided as part of  
10 an exhibit today?

11 A. Yes.

12 MS. RADERMACHER: May I approach, Your Honor?

13 ALJ DAWSON: Yes, you may.

14 Q. I've handed you what's been labeled as Nodak 11.  
15 Who does it indicate in Nodak 11 that the property owner  
16 is that was annexed into the property? Does it specify?  
17 And I think it may -- I don't know how visible that is  
18 on the plat that you're reviewing there.

19 A. On this plat?

20 Q. Yes.

21 A. It's very difficult to see.

22 Q. To your knowledge and review of the records, who  
23 is the current owner of that property?

24 A. I believe the name is Ewing Oil.

25 Q. Okay. And does Nodak Electric provide service

1 at that particular spot to Ewing Oil?

2 A. Yes.

3 Q. And at any point did the city grant a franchise  
4 to allow you to operate?

5 A. No.

6 Q. Has anybody contested Nodak's operating inside  
7 city limits without a franchise?

8 A. No.

9 Q. So do you recall exactly when McFarland's  
10 Addition was created?

11 A. I think we heard today something about the date  
12 of August 2019. My recollection is, though, that I  
13 believe that it started at that time but took some time  
14 to complete. I don't know that, but I remember a  
15 conversation with somebody later on that it hadn't  
16 happened yet, it wasn't done yet. Any time you're  
17 working with plat maps and engineers and all that kind  
18 of stuff, it can take a while to get through the  
19 process.

20 Q. Okay. And prior to the siting of the proposed  
21 Love's service station, has Otter Tail ever shown any  
22 interest in expanding its territory into that area?

23 A. Into the area of where --

24 Q. Of McFarland's Addition or west of  
25 Interstate 29.

1           A. Not to my knowledge, not that I -- not directed  
2 towards me anyway.

3           Q. Okay. One of the commissioners asked you as  
4 well regarding how the pole sharing works between Otter  
5 Tail and Nodak Electric. Are you familiar with that  
6 setup or that agreement?

7           A. Somewhat.

8           Q. What's your understanding of the agreement?

9           A. We lease space on -- as an underbuild on an  
10 overhead line. That's typically done -- sometimes it's  
11 done because a landowner doesn't want two lines on their  
12 land. Sometimes it's done because of logistical  
13 reasons.

14          Q. And so as part of this lease agreement, Nodak  
15 must make some sort of payment or periodic payment to  
16 Otter Tail for the space that it's utilizing?

17          A. I believe we do. I'm not -- I don't recall how  
18 much it is, though.

19          Q. Okay. And is there any kind of sunset clause,  
20 to your knowledge, on when that would end?

21          A. Not that I'm aware of.

22          Q. Okay. And so did you see the map that was --

23                MS. RADERMACHER: If we could, again, put up  
24 Exhibit 2, please.

25          Q. So relative to this map, what portion of that

1 line that runs on the east side of Interstate 29 is  
2 actually on Otter Tail's poles?

3 A. I believe we have one, what we call a riser pole  
4 there where it goes from underground to overhead. And  
5 then heading kind of northeast and then turning and  
6 heading east, that's all underbuilt on Otter Tail's  
7 line.

8 Q. Okay. So anywhere that you cross over Otter  
9 Tail's lines, are those all overhead that we see on this  
10 map relative to this particular issue?

11 A. Where we cross over Otter Tail's lines?

12 Q. Yes.

13 A. Where's that?

14 Q. There was a reference -- Mr. Sanderson had asked  
15 Mr. Breidenbach regarding how we have some line  
16 crossings, that we'd have a potential line crossing off  
17 to the west side of the property and a potential line --  
18 or an already existing line crossing. Is that, to your  
19 understanding, distribution line of Otter Tail's?

20 A. No. That we would be crossing underneath their  
21 transmission lines.

22 Q. Okay. So they only have the transmission line  
23 that's currently in the area, no distribution lines --  
24 is that accurate? -- that you would be crossing?

25 A. The McFarland Addition?

1 Q. Yes.

2 A. Just the transmission line.

3 Q. Okay. And it's all overhead transmission line?

4 A. Yes.

5 Q. And if you -- and I think Mr. Breidenbach kind  
6 of touched on this, but if they were to put in  
7 underground and there would be a line crossing where our  
8 current underground is, would that cause you some  
9 concern?

10 A. Yes.

11 Q. And why is that?

12 A. Well, any time you've got multiple lines in the  
13 area, it can be confusing to the -- to the linemen that  
14 go out to work on it. It can be a safety issue because  
15 of that confusion. Construction can be problematic, as  
16 Steve pointed out, where you can hit a line and those  
17 kind of things are -- or nick a line and not even know  
18 it for a while. But yeah, it's -- any time you're  
19 putting multiple power lines in the same spot, it's not  
20 the greatest idea.

21 Q. Okay. And I also asked these questions of Steve  
22 but I want to ask them of you as well. Do you believe  
23 that Otter Tail's extension of service as proposed would  
24 interfere with Nodak's current facilities?

25 A. I do. And when I say interfere, I'm not

1 necessarily looking at we can't open a cabinet because  
2 Otter Tail has another cabinet right there and  
3 physically interfere as much as economically interfere.  
4 We've made a tremendous investment to bring power to  
5 this property. And then extending services into that  
6 property would definitely economically interfere with  
7 our -- with our system.

8           You know, I think about when, if you're going to  
9 buy a lot to build a house on, there's not a power line  
10 on that lot. There's a power line adjacent to that lot.  
11 That's how it works. You wouldn't buy it if it had a  
12 power line in the middle of it, necessarily. Well, this  
13 one does. But it's -- so we've built this out so that  
14 we can -- we can serve a member there and that's what we  
15 want to do.

16           Q. And so if, say, somebody wanted to build a house  
17 south of that lot there, I mean, a logical extension  
18 could be on the -- off of the single-phase that's  
19 already intersecting Love's property; is that correct?

20           A. Certainly.

21           Q. Now based on the annexation of McFarland's  
22 Addition, you're essentially precluded from making any  
23 expansion directly off that line; is that correct?

24           A. Right.

25           Q. Do you believe that Otter Tail's extension of

1 service as proposed would waste -- excuse me -- would  
2 result in an unreasonable duplication of services?

3 A. Absolutely. We've got services right there  
4 right now. 300 feet away is as close as you get with  
5 these kind of projects. So would it be a duplication?  
6 Yes. We already have our power lines adjacent to the  
7 property. Is that unreasonable? I think so. I think  
8 it's unnecessary.

9 Q. And based on -- now, Steve predicts that  
10 approximately -- it could cost approximately three times  
11 at least the extension of service that Nodak Electric  
12 would make. Would you agree with that assessment?

13 A. Steve would be better to identify the exact  
14 cost. It seems logical that if it's three times  
15 farther, it's three times more expensive. But if it's  
16 twice as much, I think it's still wasting money.  
17 There's a reason that the Territorial Integrity Act got  
18 put in place, and it was to avoid duplication of  
19 services, to avoid wasteful spending of the  
20 infrastructure dollars that go into serving these  
21 properties. And although I understand that this is  
22 inside the city limits, this -- that's the crux of what  
23 the whole TIA was for.

24 Q. And building electric line can be very capital  
25 intensive?

1           A.   Very much.

2           Q.   And so you've already made a lot of that  
3 investment in plant just in the area that we're talking  
4 about?

5           A.   That's why the return on investment would be  
6 what it would be, because we've already made the  
7 investment to provide service to this area.

8           Q.   And Otter Tail, to your knowledge, has no way to  
9 serve this load except for bringing it across I-29,  
10 other than the step-down that we were talking about?

11          A.   It technically could put a substation there, but  
12 for a single customer of this size, that would be  
13 fiscally irresponsible.  But if that were to happen,  
14 that would be with the intention of serving more than  
15 just that one area.

16          Q.   Okay.  And -- actually, I think I'll conclude  
17 with that.

18               MS. RADERMACHER:  I have no further questions.

19               ALJ DAWSON:  Mr. Sanderson.

20               MR. SANDERSON:  Thank you, Judge.

21                               CROSS EXAMINATION

22   BY MR. SANDERSON:

23           Q.   Good morning, Mr. Einarson.  My name is Paul  
24 Sanderson.  I represent Otter Tail, as you know.

25               I do have some follow-up questions with respect

1 to your testimony, and I'll start with the franchise  
2 portion of your testimony. Am I correct in  
3 understanding Nodak Electric Cooperative does not  
4 possess a current franchise to serve within the city of  
5 Drayton?

6 A. That's correct.

7 Q. Okay. And at no time has the City of Drayton  
8 ever granted Nodak a franchise to serve within the city  
9 limits?

10 A. That's correct.

11 Q. Okay. You were also aware that on April 13,  
12 2020, the City of Drayton passed a resolution  
13 specifically authorizing Otter Tail Power to serve the  
14 Love's Truck Stop in McFarland's Addition?

15 A. I've been made aware of that, yes.

16 Q. Okay. Now, let's talk about where you kind of  
17 left off with the interference with existing services.  
18 And you agree that Nodak Electric Cooperative does not  
19 currently serve any customers within McFarland's  
20 Addition; correct?

21 A. Correct.

22 Q. And just, again, so the record is clear, you're  
23 aware McFarland's Addition is located within the city  
24 limits of the city of Drayton; correct?

25 A. Correct.

1 Q. Okay. Now, you mentioned Nodak is an electric  
2 cooperative; correct?

3 A. Yes.

4 Q. And electric cooperatives in North Dakota are  
5 organized under NDCC Chapter 10-13; correct?

6 A. I assume so. I'm not a lawyer.

7 Q. And the very first provision of the electric  
8 cooperative's act under North Dakota law provides  
9 purposes of electric cooperatives. Are you aware of  
10 that?

11 A. I don't know the -- the verbiage of the Century  
12 Code, no.

13 Q. Well, let me ask you this. What is the purpose  
14 of an electric cooperative under North Dakota law?

15 A. Under North Dakota law?

16 Q. Yes.

17 A. Again, I'm not an attorney and I don't know what  
18 it says there. To me, our purpose is to provide  
19 electric service to our members.

20 Q. Okay. And let's talk about your members. And  
21 the law provides Section 10-13-01, under purposes of  
22 electric cooperatives, that a cooperative may be  
23 organized and operated as an electric cooperative for  
24 the purposes of engaging in rural electrification by any  
25 one or more of the following. And number one is

1       furnishing electric energy to persons in rural areas who  
2       are not receiving central station service.

3               And are those the customers you were referring  
4       to?

5       A.    Yes.

6       Q.    Okay.  And let's just, to be clear, rural areas  
7       who are not receiving central station service, you agree  
8       that residents of the city of Drayton are receiving  
9       central station service pursuant to a city franchise  
10      with Otter Tail; correct?

11      A.    Residents?  Yes.

12      Q.    Okay.

13      A.    But there's also a member there that's not  
14      getting central station service from Otter Tail or  
15      pursuant to a franchise.

16      Q.    And that's what you testified you discovered  
17      late last night, that there may be a customer on the  
18      north side of Highway 66 that you believe was annexed in  
19      that you believe Nodak is providing service to?

20      A.    Yes.

21      Q.    You agree that McFarland's Addition is, and I  
22      believe we indicated, would be within the city limits of  
23      Drayton today?

24      A.    Today, yes.

25      Q.    Okay.  And because of that, being in the city

1 limits, a customer would be entitled -- a customer  
2 within the city limits would be entitled to receive  
3 central station service from Otter Tail pursuant to the  
4 franchise; correct?

5 A. That's a pretty general statement but --

6 Q. Fair. You talked about your customers or  
7 members. How are members of electric cooperatives  
8 defined under North Dakota law?

9 A. I'm -- you keep asking me about North Dakota  
10 law. If you want to provide it for me so I can see it,  
11 I could read it for you but --

12 MS. RADERMACHER: Your Honor, I'd kind of object  
13 to this line of questioning. This is more -- I think  
14 more appropriate for Mr. Sanderson to make this  
15 argument. I think he can ask a question, is based on  
16 the law saying, do they -- can they provide -- or  
17 they're getting central station service. But to have  
18 him testify as to what the law is, again, I think it's  
19 more appropriate for argument and not for --

20 MR. SANDERSON: May I respond --

21 ALJ DAWSON: Mr. Sanderson.

22 MR. SANDERSON: -- to that, Your Honor? My  
23 question to the president, CEO of Nodak was simply how  
24 is members -- he testified to his members -- how is  
25 members defined under North Dakota law. Certainly he

1 can testify whether or not he understands how it's  
2 defined under North Dakota law.

3 ALJ DAWSON: Well, he's not an expert in North  
4 Dakota law, obviously and so these questions don't seem  
5 to be going anywhere. I would ask that you reframe your  
6 questions and ask them within his knowledge, not as to  
7 North Dakota law.

8 MR. SANDERSON: Certainly.

9 BY MR. SANDERSON:

10 Q. Mr. Einarson, one of the things you talked about  
11 was the new line extension policy you have, Exhibit 7;  
12 correct?

13 A. Correct.

14 Q. And Exhibit 7 indicates the cooperative -- your  
15 new line extension policy provides:

16 "The cooperative will build all extensions  
17 of facilities in the most direct and  
18 inexpensive manner possible."

19 Correct?

20 A. Correct.

21 Q. And then it says:

22 "The customer requesting service will be  
23 required to sign an agreement to pay a  
24 minimum charge for a period of at least five  
25 years from the date service is made

1           available."

2           That's the next provision; correct?

3           A.    Correct.

4           Q.    And has Love's Truck Stop requested service from  
5   Nodak Electric Cooperative?

6           A.    No, they have not.

7           Q.    Is Love's Truck Stop a member of Nodak Electric  
8   Cooperative?

9           A.    No, they are not.

10          Q.    Has Love's Truck Stop submitted any membership  
11   application to Nodak Electric Cooperative?

12          A.    No, they have not.

13          Q.    Now, you were asked about the unreasonable  
14   interference with existing services, and I want to be  
15   clear how I understood your testimony.  You agree that  
16   Otter Tail's extension to serve Love's would not result  
17   in any physical interference with any of Nodak's current  
18   services or customers; correct?

19          A.    Without -- without considering the safety  
20   aspects that potentially could be in place, I would  
21   agree with your statement.

22          Q.    Okay.  And the safety aspect that we heard Mr.  
23   Breidenbach testify this morning are more hypotheticals  
24   that, during construction, something could happen during  
25   the construction that could interfere with.  Is that

1 what you were referring to as to physical interference?

2 A. And again, I didn't say physical interference.  
3 I said without respect to the safety aspects. If we put  
4 these two lines in close proximity, there can be a  
5 safety issue, as Steve alluded to. We go and mark our  
6 line and somebody that's digging thinks that all the  
7 lines are marked and they start digging because it's --  
8 and so that's a safety aspect to a consumer or the  
9 public. There's other safety aspects to our linemen as  
10 well but -- so...

11 Q. And do you hold yourself out as a safety expert?

12 A. No.

13 Q. Okay. Are you aware of any provision of the  
14 NESC that precludes Otter Tail's proposed extension to  
15 Love's for any safety reasons?

16 A. No, I'm not.

17 Q. Okay. So really, and I believe your testimony  
18 was the interference is more an economic interference  
19 with your potential future business; correct?

20 A. That's what I said, yes.

21 Q. Okay. Would Otter Tail's proposed extension to  
22 serve Love's interfere economically with any current  
23 customer that Nodak has?

24 A. Well, in an aspect, yes, because all our members  
25 share in our revenue. So if extending this line stops

1 us from getting the revenue that we would otherwise get,  
2 it will impact all our members economically because we  
3 all share in that.

4 Q. Okay. And you're talking about a hypothetical  
5 that should you get the Love's Truck Stop. My question  
6 was a little different, Mr. Einarson. My question was,  
7 as you sit here today, if tomorrow they extend their  
8 service, do any of your customers pay more or less than  
9 they were paying today because of that extension?

10 A. Not until -- well, not today, but tomorrow they  
11 do because we would not be getting the revenue off of  
12 the -- off of the load.

13 Q. Okay. One of the things you've testified over  
14 and over is that you built out your system to -- for  
15 expansion. And when we look at Exhibit 2, that grain  
16 bin, the farm with grain bins that -- where you're  
17 proposing to run your service, that was a customer that  
18 required three-phase service there; correct?

19 A. Correct.

20 Q. And you ran a three-phase service to serve that  
21 customer?

22 A. Right.

23 Q. Okay. And that customer, whether three-phase --  
24 whether Nodak runs an extension or not to Love's, it  
25 still has three-phase service there; correct?

1           A.    Yes.

2           Q.    And whether Otter Tail runs their service over  
3 to McFarland's to serve Love's, that customer is still  
4 getting three-phase service; correct?

5           A.    (No audible response.)

6           Q.    And again, maybe you can also confirm. Your  
7 next closest customer that has three-phase service is  
8 approximately a mile north of that farm; correct?

9           A.    On this line, yes.

10          Q.    Okay. And in fact, on your Exhibit 5, you only  
11 have three customers within a two-mile radius of Drayton  
12 that receive three-phase service?

13          A.    I believe that's correct.

14          Q.    Okay. Now, you've testified that Nodak has made  
15 investment in its plants and system to provide future  
16 service; correct?

17          A.    Correct.

18          Q.    You would also agree that Otter Tail Power has  
19 made investments in their plant and system to serve  
20 customers located within the city of Drayton; correct?

21          A.    (Indiscernible)

22          Q.    Okay. And so if you serve this load within the  
23 city of Drayton, Nodak would be interfering with the  
24 investments that Otter Tail has made to serve customers  
25 within the city, correct, economically?

1           A. No, I wouldn't think so because they're on the  
2 other side of the interstate. We're right adjacent to  
3 the property.

4           Q. You would agree they've designed their system to  
5 serve all customers within the city limits; correct?

6           A. I can't speak to how they design their system,  
7 but I would assume that they've provided for some  
8 ability to expand, yes.

9           Q. Now, one of the things you testified that -- you  
10 said the Territorial Integrity Act was put in place to  
11 prevent situations like this. Was that your testimony?

12          A. In a roundabout way. I didn't say that exact  
13 thing, but what I said is that the TIA was put in place  
14 to stop wasteful duplication of infrastructure dollars  
15 for situations just like this.

16          Q. Well, am I correct in my understanding, is your  
17 understanding the Territorial Integrity Act precludes a  
18 utility from going outside city limits to serve a load  
19 without getting permission from the Commission?

20          A. Correct.

21          Q. Okay. And there's ten factors, including  
22 revenue, line extension, cost, that go into that  
23 determination; correct?

24          A. Correct.

25          Q. That's not what is occurring in this case. You

1 would agree with that?

2 A. I would agree that the Commission has limited it  
3 to three points, yes.

4 Q. Well, the property in dispute in this case is  
5 within the city limits?

6 A. Right.

7 Q. Okay. So this is not a situation where Otter  
8 Tail Power is attempting to go outside of the city  
9 limits, correct, to serve a customer?

10 A. Correct.

11 Q. Okay. Now, you also indicated that it's your  
12 opinion there would be an unreasonable duplication of  
13 services if Otter Tail serves Love's Truck Stop.

14 A. Correct.

15 Q. Okay. You agree Nodak has no three-phase  
16 electric service to any customer in McFarland's  
17 Addition?

18 A. We have no customers in McFarland Addition right  
19 now.

20 Q. Okay.

21 A. Single-phase or three-phase.

22 Q. Certainly. And to serve a customer, you'd have  
23 to run three-phase into McFarland's Addition; correct?

24 A. 350 feet.

25 Q. Yep. And to serve -- for Otter Tail to serve,

1 they need to run three-phase service into McFarland's  
2 Addition at what you determined to be about three times  
3 the distance?

4 A. Correct.

5 Q. Okay. Now, I want to talk to you a little bit  
6 about your communications with the City. And I believe  
7 you testified Mayor Charles Olson called you at some  
8 point to discuss the issue of service for the Love's  
9 Truck Stop; correct?

10 A. He did.

11 Q. Okay. And in your testimony, you said Mayor  
12 Olson called you, telling you the City was going to  
13 annex the property into city limits. Did Mr. Olson --  
14 did Mayor Olson tell you that?

15 A. I don't believe Mayor Olson told me they were  
16 going to annex it. He told me -- if I said that, I  
17 misspoke. He called to tell me that Love's is building  
18 this truck stop. He knew that there was a -- that Otter  
19 Tail wanted to serve it, we want to serve it, there had  
20 been letters written from our attorney to the city  
21 attorney. He called to tell me that Love's wants Otter  
22 Tail as their member -- or as their customer, and what  
23 Love's wants is what we want.

24 Q. Okay. So the City of Drayton formally stated to  
25 you they want Otter Tail to serve this property?

1           A.    They did.

2           Q.    Okay.  Now, in addition, I believe you  
3   referenced a meeting that Chris Waltz and Jeremy Rham  
4   came to Grand Forks, two representatives of Otter Tail  
5   came to Grand Forks to meet with you and discuss these  
6   issues; correct?

7           A.    Correct.

8           Q.    Okay.  And then after that, you said that you  
9   received a call from -- that's when you received a call  
10  from the mayor?

11          A.    Yes.

12          Q.    Okay.  And then the mayor set up a meeting with  
13  Nodak, with representatives of Otter Tail, and with  
14  Steve Walters, the representative of Love's Truck Stop;  
15  correct?

16          A.    Otter Tail was not included in that  
17  conversation.

18          Q.    Okay.  So you had a conversation without Otter  
19  Tail being present with the mayor and Steve Walters?

20          A.    Yes.

21          Q.    Okay.  After your initial meeting in Grand  
22  Forks, did you meet on two more occasions with Chris  
23  Waltz and Jeremy Rham to discuss these issues where the  
24  City and Love's was also present?

25          A.    We had two phone calls.

1 Q. Two more phone calls with Otter Tail, the City,  
2 and a representative of Love's after your phone call  
3 without Otter Tail? Is that your testimony?

4 A. So what I remember is that the mayor called me  
5 to talk to me individually. He said, I'd like to talk  
6 to -- I pointed out, I said I'd love to talk to the  
7 folks from Love's, and he said, okay, I'll set it up.  
8 So the next day we had a conference call between the  
9 mayor, Steve Walters, and (indiscernible).

10 The only other phone call I remember offhand  
11 here is one that Otter Tail set up between Otter Tail,  
12 Love's, the mayor, and Nodak.

13 Q. Okay. So you recall one specific -- after your  
14 phone call with just Love's and the City, you recall one  
15 phone call with the City, Love's, Nodak, and Otter Tail?

16 A. Correct.

17 Q. Okay. Do you recall any in-person meetings, any  
18 further in-person meetings, with representatives of  
19 Otter Tail to discuss these issues?

20 A. I only recalled one time that -- that the two  
21 guys from Otter Tail came down to Nodak to talk.

22 Q. Okay.

23 A. I don't remember in-person.

24 Q. During your telephone call with the mayor of the  
25 city of Drayton and a representative of Love's Truck

1 Stop, did they ask Nodak not to challenge this load and  
2 that they wanted Otter Tail to serve this customer?

3 A. Initially. And by the end of the phone call,  
4 Mr. Walters asked me for -- for breakdowns of what the  
5 monthly power cost would be. He then emailed me and --  
6 we had discussed during that phone call the opportunity  
7 to put an electric car charging in at the truck stop as  
8 well. He emailed me and said that he had spoken with  
9 Mr. Love and that perked his interest and could I send  
10 him a Coles Notes or a CliffsNotes version of what could  
11 potentially happen there. That all went to him -- went  
12 to him the following day.

13 Q. Okay. What was your next communication with  
14 Love Truck Stop after that group call?

15 A. I believe the next communication was the  
16 four-way phone call that we had with Otter Tail and the  
17 mayor and -- and Love's.

18 Q. Okay. I apologize. I had those -- okay. So  
19 during -- and that's where I'm getting to. The four-way  
20 phone call, during that phone call, did the mayor and  
21 Love's ask Nodak not to challenge this load and that  
22 they want Otter Tail to serve this customer?

23 A. It happened over a year ago. I believe so. The  
24 actual words, I'm not sure if they said don't challenge  
25 it. The mayor did say that he wanted Otter Tail to

1 serve it because that's what Love's wanted. Love's said  
2 they wanted Otter Tail to serve it because they feel it  
3 would be less expensive.

4 And at the end of that phone call, I sent an  
5 email out to everybody thanking them and saying I  
6 appreciate the conversation. Unfortunately, it seems  
7 that we're not able to come together here so we might  
8 need the Public Service Commission to weigh in and, at  
9 the end of the day, what's most important is that Love's  
10 is going to locate in Drayton and it's good for  
11 everybody.

12 Q. Okay. So that call that you just referenced the  
13 details of occurred after you had sent Love's your cost  
14 estimate -- cost projections for this facility?

15 A. Yes.

16 Q. Okay. And am I correct -- let me ask you this.  
17 What was the time frame, just roughly, of that call?

18 A. The duration or what time of year?

19 Q. Just month, you know, month and year of that  
20 call. And I thought you said June 2019, but I just want  
21 to confirm.

22 A. June 4th, I have here, but I don't remember --  
23 that would have been 2020. June 4th of 2020.

24 Q. Okay. And so that call was June 4 of 2020. And  
25 by that time, the city had already passed a resolution

1 in April of 2020, indicating that it had selected Otter  
2 Tail to serve that load?

3 A. Yes.

4 Q. Who initiated this June 4th, 2020, call?

5 A. Christopher Waltz.

6 Q. Okay. And you said you don't recall the  
7 specific language used, but was the general  
8 understanding, during that call, that the city and  
9 Love's were asking Nodak not to challenge this load?

10 A. I wouldn't characterize it that way. I would  
11 say that the City was telling us that this is how they  
12 felt. I would say that Love's was telling us that they  
13 believe that they should be able to choose their power  
14 provider. I wouldn't phrase it specifically in the way  
15 you did.

16 Q. Well, when you say Love's was telling you they  
17 should get to choose their power provider, that's your  
18 testimony?

19 A. That's the tenor of the conversation, yes.

20 Q. And in fact, Love's told you during that  
21 conversation who they chose to provide power, Otter Tail  
22 Power; correct?

23 A. They told us their preference, yes.

24 Q. Okay. Now, one of the things you introduced in  
25 this case was Exhibit 8, and that was a document that

1 had controlled and uncontrolled rates; correct?

2 A. Right.

3 Q. Now, you said you did not provide -- I believe  
4 your testimony was you did not provide controlled rate  
5 projections to Love's at any point in time; correct?

6 A. No, I didn't say that.

7 Q. Okay. Did you provide controlled rates to --

8 A. What I said was that I didn't -- this document  
9 that -- whatever it is, No. 8, I did not send that to  
10 Love's. I did send them rate projections for both  
11 controlled and uncontrolled loads.

12 Q. And when you say controlled and uncontrolled, I  
13 want to make sure I understand it. And typically, is  
14 that sometimes referred to as interruptible loads?

15 A. Yes. Yes. It means using load management  
16 versus firm power without any load management.

17 Q. Okay. At any point in time, did Love's ever  
18 indicate to Nodak that they wanted interruptible service  
19 for their 24-hour-day, 365-day-a-year truck stop?

20 A. No.

21 Q. Okay. Now, I want to spend some time talking to  
22 you about Exhibit 6, and that is the area service  
23 agreement. Do you have that document in front of you?

24 A. Yes, I do.

25 Q. Okay. And just to be clear, this document was

1 created in March of 1968. I didn't -- or I don't  
2 recall, but pretty safe, you were not working for Otter  
3 Tail in March of 1968?

4 A. I was one year old.

5 Q. Okay. And when did you -- when did you first  
6 become employed with Nodak?

7 A. Would have been December 27th, 2012.

8 Q. Okay. Is it safe -- is it fair to say, with  
9 respect to this document, you have no personal knowledge  
10 as to the negotiations or what was going on to form this  
11 document with Nodak?

12 A. Obviously not.

13 Q. Okay. And your knowledge of this document is  
14 simply what you've read and interpreted from these  
15 provisions; correct?

16 A. Right.

17 Q. Okay. Let's start at page 2 of the service area  
18 agreement. And if we look at paragraph 1, it says:  
19 Both parties agree to the following general conditions,  
20 and they shall be used as a guide.

21 A. I might be looking at the wrong thing. Where  
22 are you at? Page 2?

23 Q. Page 26 Exhibit 6, and under the service area  
24 agreement, and I'm specifically looking at paragraph 1.

25 A. Where it begins "In an earnest"?

1 Q. Yeah. And I kind of skipped down to the third  
2 from the bottom line -- or where it kind of says:

3 "Both parties agree to the following general  
4 conditions, and further agree that these  
5 conditions as set forth, shall be used as a  
6 guide."

7 A. Uh-huh.

8 Q. That's what the document says?

9 A. That's what it says.

10 Q. Okay. And if we go to paragraph 2, it says:

11 "The company shall serve all territory  
12 located within and adjacent to urban areas  
13 served by the company."

14 And again, for purposes of this, your  
15 understanding is the company is Otter Tail Power?

16 A. Right.

17 Q. Okay. And you talked about the difference  
18 between the 1968 service agreement and the 1958 service  
19 agreement was a change to the verbiage regarding  
20 annexation. Was that your testimony?

21 A. Yes.

22 Q. Okay. Well, if we look at paragraph 2 and that  
23 sentence, it says:

24 "We hereby agree that the company shall  
25 serve all territory located within and

1 adjacent to the urban area served by the  
2 company as outlined on the attached maps,  
3 the intent being to avoid any transfer of  
4 customers when such areas may be annexed by  
5 the municipalities."

6 Correct?

7 A. Correct.

8 Q. That's the whole intent of that purpose pursuant  
9 to the reading of that paragraph; correct?

10 A. The whole intent of?

11 Q. That's the -- the listed intent in paragraph 2.

12 A. So is the intent of paragraph 2 to say that any  
13 transfer -- we're trying to avoid transfer of customers  
14 when annexation happens?

15 Q. Yes.

16 A. Okay. That's what that line says.

17 Q. Okay. And in this situation that we're talking  
18 about in this case, Nodak had no customers in the area  
19 of the annexation; correct?

20 A. Correct.

21 Q. And we're not in a situation where we're dealing  
22 with Otter Tail having to compensate Nodak for its lines  
23 -- service lines or facilities that were in annexed  
24 areas; correct?

25 A. Correct.

1 Q. Okay. And if we go to paragraph 3, that  
2 provides that electric service outside the city limits  
3 will be served by Nodak?

4 A. Are you asking me?

5 Q. Yes. Is that correct?

6 A. If number 3 says that we will serve outside the  
7 -- it says outside the adjacent area outlined by the  
8 maps.

9 Q. Okay. Well, let's talk about the maps, and  
10 let's go to the next page and look at paragraph 7. And  
11 paragraph 7 of this agreement says:

12 "Upon mutual agreement, any maps, prints,  
13 revisions, or sketches used to further  
14 describe territory changes shall become a  
15 part of this agreement. These consist of as  
16 follows."

17 And there's a quotation mark, and it says:

18 "Map description, date made part of this  
19 agreement, company initials, cooperative  
20 initials."

21 Do you see those provisions?

22 A. I do.

23 Q. And at least the signed copy that I have of  
24 Nodak Exhibit 6 does not reference any maps that are  
25 incorporated as part of the 1968 agreement.

1           A. They're not detailed there, no, but it does --  
2 in the first -- first sentence in paragraph 2 on the  
3 previous page, it says, "as outlined on the attached  
4 maps."

5           Q. Yes, it does.

6           A. So there's 50 of them. So they're not listed  
7 here. They're attached and -- and signed as per this  
8 one.

9           Q. Okay. And your testimony is there were 50 maps  
10 attached to this 1968 agreement but they're not  
11 referenced in the agreement anywhere?

12          A. I don't know if it's 50. I just said 50 -- it's  
13 a bunch of them. And it -- I do think it's referenced  
14 in the agreement where it says attached maps.

15          Q. Okay. And it says, upon mutual agreement, any  
16 maps shall become part of this agreement. These consist  
17 of as follows, and there's no description of what maps  
18 are attached. And to be fair, there's no description in  
19 the service -- 1968 service area agreement as to what  
20 maps are attached; correct?

21          A. If that's what you're getting at, I'll give you  
22 that, that in these two pages, it doesn't identify  
23 verbatim which maps are attached, but it's the maps  
24 around the service area agreements where we butt up  
25 against each other.

1 Q. Okay. And that's your interpretation?

2 A. Right.

3 Q. But you have -- you were not present in 1968 to  
4 know what the intent of the drafting parties were;  
5 correct?

6 A. Correct.

7 Q. Okay. And the map that you've attached is dated  
8 1961; correct?

9 A. Right.

10 Q. But, again, that 1961 map is not referenced in  
11 paragraph 7?

12 A. Referenced in paragraph 2.

13 Q. Well, it says attached maps, but it doesn't  
14 specifically state the map 64 of the city of Drayton;  
15 correct?

16 A. Correct.

17 Q. Okay. Now, I want to move to paragraph 8 of the  
18 agreement. It also says:

19 It is agreeable to both parties that,  
20 sometime within the month of January or  
21 February, the board of directors of the  
22 cooperative and managers and people  
23 designated by Otter Tail Power Company will  
24 get together for a meeting to discuss any  
25 problems that may have occurred the last

1           year and talk about any further agreements  
2           that may take place.

3           Do you see that provision?

4           A.    I do.

5           Q.    Now, the next page of the service area agreement  
6           you attached, the 1968, is -- appears to be meeting  
7           minutes from a July 28th, 1972, annual area service  
8           agreement meeting. Do you see that?

9           A.    Yes.

10          Q.    So we know at least after 1968 Nodak and Otter  
11          Tail, pursuant to the provisions that they would meet  
12          yearly in January or February, met in 1972. Is that  
13          your understanding or interpretation?

14          A.    Yes.

15          Q.    Okay. When was the next annual area service  
16          agreement meeting between Nodak and Otter Tail following  
17          the July 1972 meeting?

18          A.    I don't know. It appears as though the boards  
19          were meeting back in the early '70s and there was no  
20          changes to the maps so they quit taking the time to get  
21          together to do that. The -- in the minutes that we  
22          have, it just refers to the wonderful working  
23          relationship that we have with Otter Tail and there  
24          wasn't anything that said this is why we're not meeting  
25          anymore.

1 Q. When was --

2 A. I assume it's because -- assume it's because  
3 there was no changes to those maps.

4 Q. Yep.

5 A. The changes have been very few and far between  
6 over the years.

7 Q. Sorry, and I didn't mean to interrupt you.

8 When was the last annual area service agreement  
9 meeting between Otter Tail and Nodak?

10 A. I don't know.

11 Q. Can you state whether the parties have complied  
12 with paragraph 8 of the 1968 agreement and held a  
13 meeting in the past 49 years?

14 A. In the past 49 years? I do not -- I don't know  
15 when they met other than apparently in 1972.

16 Q. Okay. When was the last time Otter Tail and  
17 Nodak discussed this service area agreement prior to  
18 this case?

19 A. I had some conversations with Jeremy's  
20 predecessor regarding the Devils Lake area. That would  
21 have been 2013 -- '14, '13.

22 Q. Now, one of the things you testified to earlier  
23 today is that the Commission approved a service area  
24 agreement between Nodak and Xcel by Thompson, North  
25 Dakota.

1           A. I said they approved a change to our service  
2 area agreement.

3           Q. When was that done?

4           A. A couple years ago.

5           Q. Okay. Are you aware that in 2005 the North  
6 Dakota legislature enacted a section in the Electric  
7 Utilities Franchise chapter, Section 49-03-06, entitled  
8 "Service Area Agreements Among Electric Providers"?

9           A. Yes.

10          Q. Okay. And were you aware that that law  
11 governing service area agreements requires that any such  
12 service agreement shall be promptly filed with the  
13 Commission?

14          A. My understanding is that -- is that is for  
15 service area agreements from that date forward and that  
16 it didn't retroactively affect service area agreements  
17 that were already in place.

18          Q. And where did your understanding of that come  
19 about?

20          A. From conversation with my attorneys.

21          Q. Okay. Am I correct that Nodak has never filed  
22 the 1968 service area agreement with the Commission?

23          A. You're correct.

24          Q. Am I also correct in that Nodak has never filed  
25 the service area map for the city of Drayton for -- with

1 the Commission?

2 A. Correct.

3 Q. And am I also correct that Nodak has never  
4 received approval from the Commission for the 1968  
5 service area agreement or the Drayton map?

6 A. Not to my knowledge.

7 Q. Okay. One of the provisions of the 2005 service  
8 area agreement statute says that governing boards of a  
9 city may require approval or disapproval of a service  
10 area agreement between electric providers to the extent  
11 the agreement encompasses service locations within the  
12 city. Were you aware of that provision?

13 A. Yep.

14 Q. Okay. Was Nodak -- or excuse me. Was the City  
15 of Drayton party to the Nodak and Otter Tail 1968  
16 service area agreement?

17 A. I very much doubt it.

18 Q. Okay. Has Nodak ever presented the agreement or  
19 the maps to the City of Drayton and requested that they  
20 approve that service area agreement?

21 A. I don't think it's a requirement.

22 Q. Okay. And my question was a little bit  
23 different. Has Nodak --

24 A. No, we have not.

25 Q. Okay. But it's your position that the city of

1 Drayton, who is not party to that 1968 service area  
2 agreement, should be bound by the terms of that  
3 agreement?

4 A. Yes.

5 Q. Okay. Now, you were asked about the shared  
6 poles and that you lease space on Otter Tail's shared  
7 poles. That's your testimony?

8 A. We have an underbuild on -- yes.

9 Q. What is the basis for that knowledge that you  
10 lease -- that you lease space on that pole from Otter  
11 Tail?

12 A. Conversations with my engineers.

13 Q. Okay. Have you ever viewed any contract or  
14 lease agreement between Otter Tail and Nodak for that?

15 A. I have not.

16 Q. Okay. What amount does Nodak pay Otter Tail to  
17 lease space on its poles?

18 A. I have no idea.

19 Q. When does Nodak make annual payments for the  
20 lease of space on Otter Tail's poles?

21 A. I have no idea.

22 Q. When was the last time Nodak ever made a payment  
23 to Otter Tail --

24 MS. RADERMACHER: Objection, Your Honor. This  
25 is asked and answered. Same line of questioning. He

1 said he has no idea as to when -- what the payments were  
2 made. I believe we're on the same line of questioning.  
3 He indicated he has no idea.

4 MR. SANDERSON: And my question was different  
5 than that, Judge.

6 ALJ DAWSON: Your question is different but  
7 getting redundant.

8 MR. SANDERSON: Okay.

9 ALJ DAWSON: So move along.

10 BY MR. SANDERSON:

11 Q. Are you aware -- maybe we'll just put it this  
12 way. Are you aware of Nodak ever making a payment to  
13 Otter Tail to lease space on the poles?

14 A. Have I seen a check? No. Have I been told that  
15 we lease space? Yes. I -- I have not seen a contract.  
16 I assume that there's some sort of an agreement in  
17 place, but I don't know that --

18 Q. Okay.

19 A. -- firsthand.

20 Q. When was the last time a service area agreement  
21 map was signed between Nodak and Otter Tail Power for  
22 service around the city of Drayton?

23 A. To my knowledge, 1961.

24 MR. SANDERSON: I have no further questions.  
25 Thank you.

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ALJ DAWSON: Mr. Johnson.

CROSS EXAMINATION

BY MR. JOHNSON:

Q. So the only reason that the service area agreement hasn't been updated with the Commission is because you just believe it's grandfathered in?

A. Correct.

Q. How long ago was that conversation had? Was that right after the law was passed or has it been revisited since?

A. I'm sorry, I can't hear you.

Q. When was that conversation --

ALJ DAWSON: Is your mic on?

MR. JOHNSON: It is.

Q. When that conversation was had, was it right after the law change or was it later? Has it happened since then?

A. I've had several conversations with our corporate attorneys since being at Nodak. So I became CEO at Nodak after the law was passed so it would be after that.

Q. Okay. And Otter Tail's never approached Nodak about revisiting that and updating it and filing it with the Commission either?

A. Not filing with the Commission, no.

1 Q. Have they approached you about renegotiating the  
2 service agreement?

3 A. I spent the better part of a year trying to  
4 renegotiate a service area agreement around Devils Lake  
5 with Jeremy's predecessor. So yeah, we have had  
6 conversations about renegotiating maps around service --  
7 around these -- this exact agreement, yes.

8 Q. And that's one of the areas that's covered by  
9 this agreement as well?

10 A. Yes.

11 Q. Besides Devils Lake, has there been any others  
12 that you guys have discussed renegotiating?

13 A. Not that I'm aware of.

14 MR. JOHNSON: Okay. No further questions.

15 ALJ DAWSON: Commissioner Kroshus.

16 COMMISSIONER KROSHUS: All right. Well, I just  
17 have a few questions.

18 ALJ DAWSON: Stop for just a second.

19 COMMISSIONER KROSHUS: Sure.

20 ALJ DAWSON: We're going to take a break, I  
21 think, right now instead of going to questioning.

22 UNIDENTIFIED SPEAKER: (Inaudible).

23 ALJ DAWSON: We'll take a break right now for a  
24 luncheon recess and come back with questioning by you,  
25 Commissioner Kroshus.

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And how long do you need for lunch today? 45?

UNIDENTIFIED SPEAKER: (Inaudible).

ALJ DAWSON: Okay. Let's make every effort to  
be back here in a half hour. I'll be back here in a  
half hour.

(Recess)

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1           ALJ DAWSON:  On the record.  And it is 1:40 p.m.  
2  And we are at the portion of the hearing where  
3  Commissioner Kroshus is about ready to ask some  
4  questions.

5           Commissioner Kroshus.

6           COMMISSIONER KROSHUS:  All right.  Thank you,  
7  Your Honor.  I've been waiting patiently for the last  
8  30 minutes so...

9           I actually don't have that many questions  
10 because I think the questioning that you've gone through  
11 already has been extremely thorough and checked off  
12 quite a few of the ones I had, but just one that I -- a  
13 few that I do have.

14           So you have the bin site that's been referred  
15 to, the one that apparently has three-phase service that  
16 you would extend service into the McFarland Addition if  
17 it was determined that you should serve that customer.  
18 When that went in, was there any dispute at the time  
19 when that infrastructure went in, that three-phase  
20 service to the grain bins, did Otter Tail say, wait a  
21 second, we want to look at that as well?

22           THE WITNESS:  Not that I'm aware of.  We had a  
23 smaller single-phase load there and extended it to  
24 three-phase, I believe, in 2009.  I may -- we may have  
25 made it three-phase before that, but we upgraded it

1 in 2009. I don't believe there was any objection from  
2 Otter Tail.

3 COMMISSIONER KROSHUS: Okay. And I'm assuming,  
4 but were you aware -- I'll ask anyway -- that the City  
5 of Drayton, did they express any interest in that grain  
6 bin site at the time in terms of talking about annexing  
7 that area, what is now known as the McFarland Addition,  
8 into the city of Drayton?

9 THE WITNESS: Again, that would have happened  
10 before I was working for Nodak, but I've not seen  
11 anything or read anything to indicate anything along  
12 those lines.

13 COMMISSIONER KROSHUS: So from a chronological  
14 standpoint, and not to start getting into my thought  
15 process too much, but -- well, going back to exhibit --  
16 it would be the amended service area -- or no -- the  
17 franchise agreement between the City of Drayton and  
18 Otter Tail Power. The McFarland Addition was added in  
19 August of 2019, I believe it was. Well, actually, I  
20 take that back. August 19, 2020, a new subdivision of  
21 the city of Drayton was plotted and annexed into --  
22 right, into the city known as McFarland's Addition.

23 The Love's Truck Stop, was that already being  
24 discussed prior to that? You'd had discussions with  
25 them prior to August 19th or after?

1           THE WITNESS: Considerably before that. I think  
2 our first contact with -- with the folks from Love's was  
3 on February 23rd, 2019.

4           COMMISSIONER KROSHUS: Okay. So it's probably  
5 -- it's attractive both from a city standpoint to have a  
6 Love's Truck Stop on your tax base.

7           THE WITNESS: Absolutely.

8           COMMISSIONER KROSHUS: It's attractive from a  
9 load standpoint if you're a utility.

10           So the interest in what's now known as  
11 McFarland's Addition, I think it's -- would it be fair  
12 to say -- and I know this is somewhat speculative  
13 because you're not the mayor and others, but it just  
14 seems -- would you agree that it seems like the interest  
15 really wasn't generated on that piece of ground until  
16 after Love's announced they were coming in?

17           THE WITNESS: I would think it's pretty obvious  
18 that the interest is after -- it wasn't in the bare  
19 ground. It was in the actual annexation of the property  
20 because of what was going to happen on that ground.

21           COMMISSIONER KROSHUS: Okay. And then there  
22 were some questions on the service area agreement that  
23 Nodak has with Otter Tail, and I think you expressed  
24 that you -- outside of Devils Lake reworking that  
25 agreement to some extent with Otter Tail, I know you had

1 mentioned Xcel and the city of Thompson, I believe, but  
2 had you reached out to Otter Tail in any other areas to  
3 review the service area agreement that you had in place?

4 THE WITNESS: It comes up every now and then  
5 when there's going to be a new grain elevator on the  
6 outskirts of a small town, we discuss it and those kind  
7 of things, but we haven't reached out to have a  
8 conversation about, should we redo this or revisit it  
9 for any other reasons.

10 COMMISSIONER KROSHUS: Okay. And then in  
11 fairness, has Otter Tail reached out to you?

12 THE WITNESS: No.

13 COMMISSIONER KROSHUS: Okay. So it's a fair  
14 fight, if you will, in terms of -- and then it goes back  
15 to the, is it 1968 when you were one?

16 THE WITNESS: Yep.

17 COMMISSIONER KROSHUS: So I wasn't one. I was  
18 -- I wasn't minus one. I was three or four.

19 And then as I mentioned earlier, I don't -- no,  
20 I don't think I have any other questions at this point  
21 in time. Rather than scanning my notes, I'll defer to  
22 the other commissioners and I reserve the right to come  
23 back.

24 ALJ DAWSON: Commissioner Fedorchak.

25 COMMISSIONER FEDORCHAK: All right. Thank you,

1 Judge.

2 So along the lines -- let's see. Let's go back  
3 to the agreement, the service agreement. So you said  
4 that you didn't file it with the Commission because of a  
5 belief that it was grandfathered in. Where does that  
6 belief come from? Is that established in caselaw or  
7 something?

8 THE WITNESS: So I don't recall the date that  
9 the -- that the service area agreement law was put into  
10 place, but it predated me being at Nodak by quite some  
11 time.

12 COMMISSIONER FEDORCHAK: 2005'ish, I think?

13 THE WITNESS: I think that's about right.

14 COMMISSIONER FEDORCHAK: All right.

15 THE WITNESS: And I came to Nodak in 2012.

16 COMMISSIONER FEDORCHAK: Okay.

17 THE WITNESS: So in the conversations with our  
18 attorneys as these things come up here and there, the  
19 conversation was that they don't -- they didn't believe  
20 that the legislative intent was to void all existing  
21 agreements but, rather, to allow for new agreements to  
22 be put in place. I don't know if that's caselaw or  
23 that's just conversation with our corporate lawyers.

24 COMMISSIONER FEDORCHAK: All right. Is there a  
25 downside to filing it? I mean, is it just extra work?

1 What would be the reason not to just file it and go  
2 through that step?

3 THE WITNESS: I -- I really don't know. I  
4 suppose it just takes an effort and --

5 COMMISSIONER FEDORCHAK: (Indiscernible)

6 THE WITNESS: I think there's some -- some  
7 interest in the investor-owned utility in changing some  
8 of the agreements, and I'm not sure that that is shared  
9 by the -- the electric cooperative side, in that, for  
10 large loads and things like that, that are not  
11 contemplated in these agreements. So I think in some  
12 respects it's maybe not a -- I'm assuming it's not being  
13 discussed because we're not going to get anywhere if we  
14 start butting heads on that issue.

15 COMMISSIONER FEDORCHAK: Sure. And have you  
16 ever had any interaction -- because it sounds like  
17 you've talked with a number -- talked about the service  
18 area agreements with Otter Tail in a couple locations.  
19 Was there ever any suggestions in those communications  
20 with them that the agreement wasn't valid because it  
21 hadn't been -- like previously to now, because you  
22 hadn't brought it to the Commission and we hadn't, like,  
23 endorsed it or signed off on it or whatever, that it  
24 wasn't valid when you were negotiating in, I think is it  
25 Devils Lake?

1 THE WITNESS: Devils Lake.

2 COMMISSIONER FEDORCHAK: Was that ever part of  
3 the discussion with them then?

4 THE WITNESS: Not that it wasn't valid but,  
5 rather, that the lines that were drawn didn't make any  
6 sense, that we probably should re-look at it because of  
7 how they were laid out. And the city of Devils Lake  
8 passed a new ordinance requiring franchise agreements so  
9 we -- we started down that path.

10 COMMISSIONER FEDORCHAK: Okay. And then that  
11 didn't lead to any other conversations about, well, we  
12 should re-look at this in these other places?

13 THE WITNESS: No. My understanding is that the  
14 conversation between the investor-owned utilities and  
15 the rural electrics in the state has kind of come to a  
16 halt because of a -- because of a disagreement on how  
17 you would incorporate large loads into a new agreement.

18 COMMISSIONER FEDORCHAK: Okay. Okay. Now I  
19 want to talk a little bit about the annexation process.  
20 Well, let's talk about the franchise agreement. So when  
21 franchise agreements are being negotiated between  
22 whoever, the city and whatever party is negotiating it,  
23 what role do the service agreements play in that?

24 THE WITNESS: Well, typically, a franchise  
25 agreement with a city is a non-exclusive agreement. And

1 I believe, by statute, they're supposed to be  
2 non-exclusive. And so what happens is that if there's  
3 more than one utility serving the same city, both of  
4 them with franchise agreements, their franchise  
5 agreements outline what the service territories are. So  
6 those typically would be an agreed-upon area between the  
7 two utilities.

8 COMMISSIONER FEDORCHAK: Okay. But what if,  
9 like in this case, there's only one franchise agreement  
10 and you're looking at territory, some of which is under  
11 consideration by a service agreement, what role does  
12 that service agreement play in them being able to set  
13 boundaries in a franchise agreement?

14 THE WITNESS: Well, I think the service  
15 agreement binds the utility. So I think there's a  
16 contractual arrangement between the two utilities that  
17 would bind Otter Tail to only serve in this area that's  
18 outlined by that service area agreement. The franchise,  
19 I have to sign the franchise agreement if I'm in Grand  
20 Forks so I have to agree to what it says in there. So  
21 they're agreeing to do something that's outside what  
22 they have in a different contract.

23 COMMISSIONER FEDORCHAK: So the franchise  
24 agreement in this case came after the annexation of that  
25 property, the franchise agreement for this property in

1 question -- what's the name of the subdivision?

2 McFarland --

3 THE WITNESS: McFarland Addition?

4 COMMISSIONER FEDORCHAK: Yeah. Did this  
5 franchise agreement that Otter Tail Power received to  
6 serve there come after that property had been annexed  
7 into the city so it was no longer part of the service  
8 area agreement?

9 THE WITNESS: The franchise agreement that Otter  
10 Tail has was issued back in, was it 2011 or something  
11 like that? And I don't know if an ordinance was -- if  
12 that ordinance was changed at the same time as the  
13 annexation. But the franchise agreement is in the form  
14 of an ordinance. I don't know if that ordinance was  
15 changed to outline a new map. I don't think so.

16 COMMISSIONER FEDORCHAK: So then when property  
17 is annexed into the city, do you have a role to play at  
18 that -- in that process at all? Or can you? Do you  
19 have a voice?

20 THE WITNESS: As a non-owner in the -- to the  
21 property, typically, the property owners would be the  
22 ones that would have the larger voice. A city would  
23 have a vested interest in the -- in the services being  
24 provided in that area. So I would think that if -- I  
25 would think they would want your voice. I would think

1 they would want some input from the utilities that are  
2 involved.

3 COMMISSIONER FEDORCHAK: But there isn't a  
4 formal role?

5 THE WITNESS: No.

6 COMMISSIONER FEDORCHAK: Were you consulted when  
7 this property was annexed into the city?

8 THE WITNESS: No.

9 COMMISSIONER FEDORCHAK: Did you know it was  
10 happening? Like could you have inserted yourself and  
11 objected or provide public input? I don't know where  
12 this happens, if it's at public meetings or city council  
13 meetings or how that happens, but could you have been  
14 involved?

15 THE WITNESS: It happens as an ordinance. I  
16 don't know if not being a citizen of the city and not  
17 being a property owner, if -- if that voice makes much  
18 difference at a city council meeting. The annexation  
19 happened -- or we were told that the annexation was  
20 underway when it first began.

21 COMMISSIONER FEDORCHAK: Okay. And in your --  
22 in your opinion, what prompted that annexation? What  
23 was the driver?

24 THE WITNESS: The location of Love's Truck Stop.

25 COMMISSIONER FEDORCHAK: Okay.

1           THE WITNESS:  So that the city could get  
2 property taxes and, potentially, utility sales through  
3 water and sewer.

4           COMMISSIONER FEDORCHAK:  Okay.  What's your  
5 opinion of the role of the service area agreements, the  
6 TIA, etcetera, in helping to provide guidance in this  
7 type of a situation where you got property that was  
8 annexed that was part of a service agreement, now it's  
9 annexed into the city, and now the -- basically, the  
10 city is saying -- or the company is saying the city's  
11 rights prevail here over the service area agreement?  
12 What's your guys' interpretation of the TIA in that  
13 regard?

14           THE WITNESS:  Well, I'm no legal scholar, but  
15 from my perspective, I think that the TIA was put in  
16 place for -- to give guidance so that their -- so that  
17 the three of you protect the -- the ratepayers for the  
18 investor-owned utilities.  And the way that you protect  
19 them is by ensuring that the investor-owned utility is  
20 not wasting their money or, you know, providing service  
21 where it's not necessary.  So I think you have a voice  
22 in that and have an ability to weigh in.  I think that's  
23 why the Territorial Integrity Act was put in place.  I  
24 understand that it makes it different when there's city  
25 involved as well, but the crux behind the whole thing

1 was because of that.

2 COMMISSIONER FEDORCHAK: I want to talk a little  
3 bit about -- you've mentioned the -- let's see, where is  
4 that question? -- your investment in the three-phase  
5 near that location. You've alluded to a number of times  
6 that it's a sizeable investment and it's -- your company  
7 did that in order to serve customers like this that  
8 might come to that area. Can you quantify that  
9 investment?

10 THE WITNESS: Oof. In essence, it's \$168  
11 million in -- in plant and our service territory because  
12 it -- it is -- it's not part and parcel, just this one  
13 line. There's, you know, everything from the substation  
14 all the way to the end user's meter.

15 But the -- you know, the explanation I used  
16 before about if you're going to buy a lot and you're not  
17 expecting that there is a service line into the lot but  
18 on the edge of the property; right? When we're going to  
19 put a new development in the south end of Grand Forks  
20 and one house is going to get built, you're not going to  
21 bring in a line small enough to serve one home. You're  
22 going to bring in a line large enough to -- to serve the  
23 entire area based on your understanding of what's going  
24 to be built there, or what potentially might be built  
25 there.

1           And so that's kind of what this is -- what I'm  
2 alluding to the other -- in this area here, that, you  
3 know, you wouldn't bring in a conductor size big enough  
4 to just serve that one customer.

5           COMMISSIONER FEDORCHAK: So you guys brought in  
6 that three-phase service in, did you say 2009, to that  
7 location at the grain bins?

8           THE WITNESS: I said I know that it was upgraded  
9 in 2009. I don't know if it was three-phase before that  
10 or not. I'd have to look.

11          COMMISSIONER FEDORCHAK: Okay. But the most  
12 recent upgrades was 2009?

13          THE WITNESS: Correct.

14          COMMISSIONER FEDORCHAK: And you weren't there  
15 then, but there's not -- you don't have a lot of  
16 customers in that area. Why did you make that size of  
17 an investment at that location?

18          THE WITNESS: Well, it would be based on the  
19 fact that that -- that customers in that area wanted  
20 three-phase power. I don't know if it was that one  
21 right there or if it was the one that's a mile north of  
22 there or the other one. We've got -- Crystal Sugar is  
23 in the area. They've got three-phase power as well. So  
24 I can't speak to how that all happened. I was not  
25 there.

1                   COMMISSIONER FEDORCHAK: Who are you serving  
2 with that three-phase power now? Just that -- the grain  
3 bins?

4                   THE WITNESS: No. It continues on around the  
5 grain bins and goes north.

6                   COMMISSIONER FEDORCHAK: Okay. Because there's  
7 another three-phase north of there. Looks like the next  
8 section up or two. I can't tell. Maybe a couple miles  
9 north?

10                  THE WITNESS: Right.

11                  Is that the same line Crystal is on?

12                  ALJ DAWSON: He can't answer.

13                  THE WITNESS: Yeah, sorry. I figured that would  
14 be the case.

15                  COMMISSIONER FEDORCHAK: I'm looking at Nodak 5.

16                  THE WITNESS: Right. Nodak 5. So there's --  
17 the three-phase customer right there, there's one that's  
18 -- looks like it's a mile north that's on that same  
19 line. And then we've got one across the interstate. I  
20 don't know if that is tied in or not. I don't have the  
21 distribution map on my -- at my disposal.

22                  COMMISSIONER FEDORCHAK: Okay. Has there been  
23 any discussions of you selling your three-phase power,  
24 your investments there, your infrastructure, to Otter  
25 Tail --

1 THE WITNESS: No.

2 COMMISSIONER FEDORCHAK: -- to serve that  
3 customer?

4 THE WITNESS: No.

5 COMMISSIONER FEDORCHAK: Okay. One more thing  
6 about the franchises. How come you didn't pursue a  
7 franchise with the City of Drayton?

8 THE WITNESS: We did pursue it insofar as to  
9 tell them that if you'd like us to sign a franchise  
10 agreement, we'd be happy to do that. So we didn't  
11 formally go out and say, hey, can we have a franchise  
12 agreement? I don't believe there's an ordinance  
13 requiring a franchise agreement. So we phrased it the  
14 other way, where if you want us to sign one, we'll sign  
15 one --

16 COMMISSIONER FEDORCHAK: Uh-huh.

17 THE WITNESS: -- our service territory.

18 COMMISSIONER FEDORCHAK: Okay. And is that  
19 usually up to the cities to decide or do you usually  
20 seek them? Like who initiates those, typically?

21 THE WITNESS: I don't know. We haven't -- we've  
22 only updated existing ones since I've been with the city  
23 -- or with Nodak, and that's me initiating that renewal.

24 COMMISSIONER FEDORCHAK: If you had a franchise  
25 agreement to serve, do you think you'd have a stronger

1 position?

2 THE WITNESS: Certainly.

3 COMMISSIONER FEDORCHAK: I think that's it for  
4 now. Thank you, Mr. Einarson.

5 ALJ DAWSON: Commissioner Christmann.

6 COMMISSIONER CHRISTMANN: Do your service  
7 agreements for either new services or upgrades, are they  
8 very specific to the company, or do you look at what  
9 else is there and say, you know, if we build this out  
10 to, like, the grain bin site, this is one thing and all  
11 our cost is going to be in that and so that's it, as  
12 opposed to there's potential development land in the  
13 area and so we'll build a little larger and assume that  
14 there will be development?

15 THE WITNESS: Well, it kind of depends on the  
16 orderly layout of the system. And like with the example  
17 I used in the south end of Grand Forks, they're all  
18 within 600 feet so we make the decision about what will  
19 go in and when and where and how big it should be. We  
20 -- around Devils Lake with all these new campgrounds  
21 that are going in and stuff like that, we consult with  
22 the potential new member on how to -- on how large his  
23 system would be and -- and build it accordingly to that.

24 I'm not sure if that answers your question or  
25 not.

1           COMMISSIONER CHRISTMANN:  Might this have been  
2 built with a lesser capacity or a higher sign-up charge  
3 for the existing customer if there weren't development  
4 -- potential development land right next to it that was  
5 outside of the city?

6           THE WITNESS:  I don't know how much these  
7 members were charged at the time that it was put in  
8 place so I can't speak to that independently right now.  
9 The -- probably more of a Steve, engineering question  
10 really on how that is all developed.

11           COMMISSIONER CHRISTMANN:  Okay.  So this case  
12 has been going on for quite a while already.  Have you  
13 had conversations with some of the other cooperative  
14 managers within the association to inquire whether they  
15 have filed all of their pre-2005 service agreements with  
16 the Commission?

17           THE WITNESS:  Not that specifically, no.  We --  
18 we have monthly meetings, zoom meetings, with our group.  
19 And an update on what's been going on with this case has  
20 been provided, but we've not specifically talked about,  
21 have you filed your agreements and that kind of thing,  
22 no.

23           COMMISSIONER CHRISTMANN:  Are you aware of any  
24 that have?

25           THE WITNESS:  I know that Cass filed something a

1 while ago, like seven, eight years ago. But they were  
2 working on a multi-phase agreement with Otter Tail.  
3 They finished part of it and then that got kind of  
4 derailed and the talk stopped.

5 COMMISSIONER CHRISTMANN: Okay. And are you  
6 aware that Otter Tail filed this agreement with the  
7 Commission?

8 THE WITNESS: Ours?

9 COMMISSIONER CHRISTMANN: Right.

10 THE WITNESS: No, I'm not.

11 COMMISSIONER CHRISTMANN: And if this question  
12 is for someone else, I expect the attorney will let me  
13 know, because I don't know who else to ask, but did you  
14 read the filings leading up to this from both sides --

15 THE WITNESS: Yes.

16 COMMISSIONER CHRISTMANN: -- over the course of  
17 time?

18 So Otter Tail, in one of theirs, spent several  
19 pages discussing the case from, I believe, in the '60s  
20 up in Divide County. Do you remember that discussion?

21 THE WITNESS: Vaguely.

22 COMMISSIONER CHRISTMANN: It sounds to me like  
23 in that case, a school built outside of the city, the  
24 co-op had a yard light or something like that, some kind  
25 of a probably small service there. And it ended up in

1 the Supreme Court, I believe, and it was deemed that,  
2 because the city gave them a franchise later, it had to  
3 go to whoever the investor-owned utility was. How do  
4 you feel this case differs from that?

5 THE WITNESS: I believe the difference is that  
6 there's no ordinance with the city that requires a  
7 franchise agreement. My recollection --

8 COMMISSIONER CHRISTMANN: No ordinance with  
9 Drayton as opposed --

10 THE WITNESS: Drayton, right.

11 COMMISSIONER CHRISTMANN: Okay.

12 THE WITNESS: I think that's my -- my  
13 understanding is that's the difference but --

14 COMMISSIONER CHRISTMANN: Okay. And I think you  
15 said earlier that you believed your rates for service  
16 for Love's Truck Stop would be similar or competitive or  
17 something like that with Otter Tail's. And there's not  
18 a hook-up charge here. Why do you think that they seem  
19 to want to get service from Otter Tail?

20 THE WITNESS: Rates can be sometimes a little  
21 bit hard to -- to give you an example of or get your  
22 hands around, depending on the different -- the  
23 different programs that are available and all that kind  
24 of stuff. So I think one company can look at a proposed  
25 load and say, based on power factor and load factor and

1 the peaks versus coincidental peaks and all those kinds  
2 of things and give you one rate and then another company  
3 can give you a different rate. So I think the  
4 perception is that it would be cheaper to go with Otter  
5 Tail. But we haven't had the opportunity to sit down  
6 and describe the off-peak system that we have, the load  
7 management system, and how it could benefit them to have  
8 a dramatically-reduced rate.

9 We have a number of systems in our -- in our  
10 company that utilize that. Our corporate building is  
11 one of them. It's a simple way of reducing your -- your  
12 energy cost, your demand cost, when you have the  
13 capacity to do that. Some -- some do and some don't.  
14 We believe that this one would be one that would be a  
15 really good fit for it.

16 COMMISSIONER CHRISTMANN: Okay. No other  
17 questions. Thank you.

18 ALJ DAWSON: Ms. Radermacher.

19 MS. RADERMACHER: Yes. Thank you.

20 REDIRECT EXAMINATION

21 BY MS. RADERMACHER:

22 Q. Now, on cross-examination by Mr. Sanderson,  
23 there was some issue with whether or not Love's Truck  
24 Stop was, in fact, a member of Nodak Electric as it  
25 relates to the line extension policy. When new or

1 potentially new members come in, do you kind of advise  
2 them, if you're going to do a line extension, this is  
3 where we're at, this is what our policy states, and this  
4 is what the co-op's going to do for you?

5 A. Yes. The membership application is basically  
6 the last thing that happens right before you start  
7 installing the temporary power for construction.

8 Q. Okay. And during your conversations with  
9 Love's, at any point did they ask what your line  
10 extension policy was?

11 A. For me, my -- not directly to me. I believe  
12 that was conversations held with -- between our  
13 engineers and the consulting engineers that Love's had  
14 hired. I've not spoken to anybody from Love's about the  
15 line extension policy that we have.

16 Q. But if Love's would have come on and actually  
17 applied for membership, would they have been assured at  
18 that point in time that when they became a member, that  
19 that line extension policy was going to apply to them?

20 A. Yes.

21 Q. Now, Mr. Sanderson also stated that Otter Tail  
22 has designed their system as well within city limits for  
23 potential growth. Was McFarland's Addition part of city  
24 limits prior to the end of 2019?

25 A. Prior --

1 Q. So give or take August of 2019 --

2 A. Right. No.

3 Q. -- because we're not entirely sure. So prior to  
4 August of 2019 -- we can for sure -- was McFarland's  
5 Addition part of the city?

6 A. No.

7 Q. And so it would be -- I think the presumption  
8 would be that they didn't extend or develop plants on  
9 the west side of I-29 because they didn't have -- the  
10 municipality wasn't over on that side of I-29; correct?

11 A. Correct.

12 Q. So I would also guess that that's why we don't  
13 see any distribution line in the -- relatively in the  
14 area from Otter Tail. Is that safe to say?

15 A. Yes.

16 Q. And for Otter Tail to extend service to this  
17 site versus Nodak, there's quite a bit of difference in  
18 distance, isn't there?

19 A. Significant, yes.

20 Q. So when they're talking about, well, either one  
21 of us would have to extend based on our approximate  
22 location, I mean, we're not talking apples and apples,  
23 are we?

24 A. No.

25 Q. Their extension would require boring under I-29;

1 is that correct?

2 A. Yes.

3 Q. When Nodak is already there?

4 A. Right.

5 Q. So this is not just next door as it would seem  
6 to be assumed by counsel. Would you agree?

7 A. Agreed.

8 Q. Now, you kind of touched a bit on annexation and  
9 how it can benefit a city. Have you seen where  
10 annexation is also used to get around the choice of  
11 electric providers?

12 A. Sort of seems like this could be one of them,  
13 but that's a very strong potential.

14 Q. Okay. And so if the -- this was actually  
15 annexed within the city of Drayton, that could  
16 essentially usurp the question of a CPCN in front of the  
17 PSC?

18 A. Yes.

19 Q. Is that fair to say? So now there was also  
20 questions by Mr. Sanderson relative to whether or not  
21 you -- that Nodak was specifically asked not to  
22 challenge the decision, essentially, for Otter Tail to  
23 serve. Do you recall anything relative to those  
24 conversations?

25 A. Well, like I said, the -- I don't believe that

1 was the -- I don't remember if those were the words or  
2 the tenor of the conversation. I believe the tenor was  
3 something a little bit different in that the mayor from  
4 Drayton was indicating that the city wanted Love's to be  
5 served by Otter Tail because that's what Love's wanted,  
6 and Love's was taking the position that they wanted  
7 Otter Tail because they perceived it to be cheaper.

8 And I guess it was a conversation before that  
9 where he'd indicated that he felt he should be able to  
10 pick whoever he wanted. I'm not sure that -- I don't  
11 remember if that came up in that conversation or not but  
12 -- I don't remember that being said specifically --

13 Q. Okay.

14 A. -- don't challenge this.

15 Q. So even if they said don't challenge this, don't  
16 you feel you have an obligation to challenge it to some  
17 degree to preserve your territory?

18 A. I -- I have an obligation to protect the  
19 investment that my members have made, yes.

20 Q. And so you -- it would basically be Nodak's  
21 position not to just freely give up where -- especially  
22 where it has facilities located within this area. Is  
23 that safe to say?

24 A. Yes.

25 Q. And if Otter Tail -- if the shoe were on the

1 other foot, do you think that Otter Tail would simply  
2 not fight for that territory?

3 A. Doubt it.

4 Q. Now, I think this was kind of touched on with  
5 some of the commissioners. At any point has Otter Tail  
6 actually sought to rescind agreement -- not just amend  
7 it but sought to rescind the current service agreement?

8 A. No.

9 Q. And presumably, Nodak Electric and Otter Tail  
10 have been operating under this service area agreement  
11 for 50-plus years. Is that your understanding?

12 A. It appears that way.

13 Q. And you indicated that the service area  
14 agreement doesn't just apply to the city of Drayton,  
15 that it appears to apply to all of the territory in  
16 which you and Otter Tail serve within Nodak's service  
17 territory?

18 A. Yes. As Steve alluded to initially, Nodak is  
19 currently the product of some co-op mergers. So this  
20 does cover the initial Nodak service area. I don't know  
21 for sure if it -- if it addresses any of the other stuff  
22 from the co-ops that have merged into Nodak.

23 Q. Okay. But can you give -- since we don't have  
24 the benefit of the other maps, can you just kind of, you  
25 know, if you have an idea, what other cities or maps do

1 -- are attached to that service area agreement?

2 A. It would be the small municipalities around the  
3 -- that Otter Tail serves around the -- our northeastern  
4 corner of the state, like Minto or Manvel, little towns  
5 like that.

6 Q. Okay. And have you had any issues with Otter  
7 Tail relative to those small towns and where -- who is  
8 supposed to serve what?

9 A. No. It's been pretty amicable. The truth of  
10 the matter is most of those small towns don't expand  
11 very frequently so there's not a lot of potential for  
12 growth in some of the small communities. So it's less  
13 likely to come up there than it is in a larger  
14 community.

15 Q. Okay. And you were also asked if there's been  
16 changes to the service area agreement subsequent to  
17 1968, and you just indicated in your testimony that the  
18 changes are few and far between. So it appears that  
19 there have been some amendments, to your knowledge, to  
20 maybe some maps subsequent to the 1968 agreement?

21 A. Yes.

22 Q. And do you know what areas those were relative  
23 to, just --

24 A. I don't. There's been a couple of changes to  
25 some of the -- some of the maps that were agreed to and

1 memorialized in the -- in the document, in the maps.

2 Q. Okay. And so Otter Tail, presumably, was part  
3 of those negotiations and subsequent agreement?

4 A. Right.

5 Q. So going back to Exhibit Nodak 6, counsel had  
6 you refer to certain paragraphs within the service  
7 agreement. But would you agree that when counsel kind  
8 of asked you those questions, they were kind of  
9 nitpicking which was favorable to Otter Tail versus what  
10 might not be favorable to Otter Tail in asking you to  
11 recite certain provisions?

12 A. Yes. I think you can certainly take any  
13 statement in there and take it out of context and have  
14 it mean something different rather than reading the  
15 document as a whole.

16 Q. Okay. For example, in paragraph 2, more than it  
17 just being -- or, I mean, excuse me, paragraph 1, when  
18 it talks about being used as a guide, do paragraph 2 and  
19 3 basically encounter what looks like -- I mean,  
20 encompass what would be an agreement or a contract  
21 between the two as to what exactly is going to happen  
22 relative to certain property delineated on the maps?

23 A. I believe so, yes.

24 Q. And so is it your understanding, reading the  
25 entire service agreement, it's not merely a guide, is

1 it?

2 A. No.

3 Q. It appears to be a contract by which you guys  
4 agree this is my service territory, this is your service  
5 territory unless we agree otherwise?

6 A. It has signatures on it. If it was a guide, we  
7 wouldn't have to sign it.

8 Q. Okay. And there was also a question about  
9 whether or not there was continued meetings as expressed  
10 inside -- in paragraph 8. Would you agree that  
11 paragraph 8 conditions why those meetings would occur?

12 A. It says to discuss any problems that have  
13 occurred over the last year, or that may have occurred  
14 over the last year.

15 Q. Okay.

16 A. Talk about any further agreements that may take  
17 place.

18 Q. Okay. And if I may read, specifically it says:  
19 "We will get together for a meeting to  
20 discuss any problems that may have occurred  
21 the last year, and talk about any further  
22 agreements that may take place."

23 So presumably, would you agree that if there  
24 were no further agreements or any problems, that there's  
25 not any requirement to meet?

1           A. I believe it to be the reason that they quit  
2 meeting, but, again, that's not documented that I could  
3 see. But I believe that that's the case.

4           Q. Okay. But presumably, under paragraph 8, it  
5 kind of leaves that open to interpretation, that that's  
6 -- that they necessarily were not required to meet?

7           A. Correct.

8           Q. And to your knowledge, inside of the service  
9 area agreement or the attached map, you know, was there  
10 any sort of sunset clause as to when this agreement  
11 would no longer be valid?

12          A. No.

13          Q. Now, you talked about, with Xcel Energy, that  
14 you did actually have that agreement to some extent  
15 filed with the PSC. Was that post 2005?

16          A. Yes.

17          Q. And what was the basis for having that agreement  
18 at that point, specific to that one, filed?

19          A. So as I pointed out earlier when talking about  
20 the -- when you had the map up on the screen and you  
21 could see that the lines around the cities were drawn  
22 with a pencil and a ruler and on very small scale. In  
23 some cases, it's not very clear if it's middle of the  
24 road or the north side or south side of the road,  
25 etcetera.

1           We had an instance near -- on the north end of  
2 Thompson, North Dakota, where it was somewhat unclear  
3 where that line was supposed to be. So the Xcel  
4 representatives came to the office and we sat down and  
5 talked about it, came to an agreement, and Xcel filed  
6 that change with the Commission.

7           Q. Okay. And so there was an actual, what would  
8 probably be a significant amendment on that contract  
9 that, at that point in time, they thought it should be  
10 subject to PSC approval. Would you say that's safe to  
11 say?

12          A. Yes.

13          Q. Now, and I don't know how particularly relevant  
14 this is, but since it was a question one of the  
15 commissioners asked, would you be willing to shed some  
16 light on when you talked that there's kind of some  
17 issues about renegotiating or going into new service  
18 area agreements regarding large loads, was that an issue  
19 because Otter Tail specifically thought that loads over  
20 a certain kilowatt or megawatt, that they automatically  
21 go to them without any contention whatsoever and PSC  
22 governance?

23          A. Yes.

24          Q. And so is that what halted, essentially, Nodak  
25 from renegotiating anything?



1 Q. Okay. You would have -- you would have -- the  
2 minutes would be published for Nodak to understand what  
3 was going to be on the agenda; correct?

4 A. I assume they're published somewhere.

5 Q. And you certainly knew enough to appear at a  
6 prior -- you knew when the city of Drayton city council  
7 meeting was going to be in June of 2019; correct?

8 A. Yes. We were alerted by your staff.

9 Q. Okay. And there was nothing that prevented  
10 Nodak from appearing at the August 2019 Drayton city  
11 council meeting and voicing their concerns over  
12 annexation; correct?

13 A. No.

14 Q. Okay. You were asked a bit by Commissioner  
15 Christmann regarding that the size -- or the farmstead  
16 and the three-phase service that you were there. What  
17 size transformer is on those -- that grain bin site on  
18 the farm to the west of McFarland's?

19 A. I have no idea.

20 Q. When was that transformer installed to provide  
21 three-phase service to that customer?

22 A. As I said, I'm unaware of if it -- if 2009 was  
23 the first time it was three-phase or if it  
24 was three-phase before that. I don't know that. I know  
25 that it was upgraded in 2009.

1 Q. How much larger was that transformer sized for  
2 future growth than what was needed for that customer?

3 A. We wouldn't -- we wouldn't size the transformer  
4 larger for that specific load, no.

5 Q. Okay. That load was sized for the service that  
6 was needed for that customer?

7 A. The transformer was, yes.

8 Q. Okay. And you were asked about the distance.  
9 And I believe your testimony was Nodak's proposed  
10 extension is 350 feet, roughly?

11 A. Roughly.

12 Q. And Nodak -- or Otter Tail's proposed extension  
13 is three times that?

14 A. Roughly.

15 Q. And you consider a thousand feet extension  
16 significant? That's your testimony?

17 A. In this case, yes.

18 Q. Okay. You were asked a question by counsel that  
19 annexation can be used by cities to usurp the  
20 jurisdiction of this commission in granting a CPCN.  
21 That was your testimony?

22 A. She asked that question, yes.

23 Q. And you answered that affirmatively; correct?

24 A. I said it seems like it could be --

25 Q. Okay.

1           A.    -- this could be one of them.

2           Q.    And why annexation usurps the jurisdiction of  
3 this Commission is because cities have the  
4 constitutional right to select whatever electric service  
5 provider they want under the North Dakota Constitution;  
6 correct?

7           A.    They have the right to franchise, yes.

8           Q.    Okay.  And that franchise power usurps this  
9 Commission's authority to determine who provides  
10 service?

11           MS. RADERMACHER:  Objection, Your Honor.  He's  
12 calling for a legal conclusion from the witness.

13           ALJ DAWSON:  Mr. Sanderson?

14           MR. SANDERSON:  Yeah.  I'm following up on  
15 questions that were asked by counsel, and this witness  
16 testified to this.  I have every right to go into this  
17 line of questioning.

18           MS. RADERMACHER:  I don't -- Your Honor, if I  
19 may?  I don't disagree with the first question he asked,  
20 but now he's asking him that -- he's basically asking  
21 the witness to say that he agrees with Otter Tail's  
22 position that -- that this -- the PSC has no  
23 jurisdiction over the issue, and that's a legal  
24 conclusion.

25           ALJ DAWSON:  I'm going to agree with you in that

1 I think this last question was asking him his legal  
2 opinion and that he's not qualified to give that.

3 Although your questions up to then were fair  
4 game considering the previous questions asked.

5 MR. SANDERSON: Fair enough. Thank you, Your  
6 Honor. I will move on.

7 BY MR. SANDERSON:

8 Q. You were asked about different relationships and  
9 other circumstances between Otter Tail and Nodak in  
10 other locations. Do you recall that testimony?

11 A. Yes.

12 Q. Okay. Are you aware of any other time where  
13 there's been a situation between Otter Tail and Nodak  
14 where a piece of property has been annexed into the city  
15 and the city has instructed Otter Tail to serve the  
16 annexed area? Has that situation ever arisen between  
17 Otter Tail and Nodak prior to this case?

18 A. The City of Devils Lake passed an ordinance  
19 requiring a franchise agreement to do business in the  
20 city. And that prompted the discussion between us to --  
21 between Otter Tail and Nodak to redo that -- the service  
22 area agreement.

23 Q. Okay. And that's a situation, I believe, you've  
24 testified Nodak has a franchise to serve within the city  
25 of Devils Lake; correct?

1 A. No, we don't.

2 Q. Okay. You don't have a franchise in the city?

3 A. No, we do not.

4 Q. Okay. Did the city of Devils Lake specifically  
5 instruct Otter Tail that they have the obligation to  
6 serve specific property within -- that's in dispute  
7 that's been annexed?

8 MS. RADERMACHER: I would object, Your Honor.  
9 I'm not sure my client would be -- or that he would have  
10 the knowledge in which to answer that question. Because  
11 it's asking, basically, essentially, about a  
12 conversation or agreements that would have occurred  
13 between Otter Tail and the city of Devils Lake. And I  
14 would also object on the grounds of relevance.

15 ALJ DAWSON: Mr. Sanderson?

16 MR. SANDERSON: Yes. The witness was asked on  
17 redirect about other situations and relationships that  
18 have occurred between Otter Tail and Nodak regarding the  
19 service area agreement in other locations, and he  
20 testified to that. And my question was: Have any of  
21 those situations been the result of where a city has  
22 annexed property and instructed Otter Tail to serve?

23 ALJ DAWSON: I'm going to allow the question.

24 A. I can't say specifically that the city has -- I  
25 can't remember the word you said -- has required or

1 obligated them to serve. The -- in the newly annexed  
2 area, we didn't have a franchise agreement because the  
3 service area agreement was not -- we didn't finish the  
4 negotiations. So Otter Tail did end up serving those,  
5 yes.

6 BY MR. SANDERSON:

7 Q. In any of those other situations, has the city  
8 passed a resolution regarding who is to serve specific  
9 property?

10 A. Not that I'm aware of.

11 Q. Okay. So this case would be the first time that  
12 that issue has arisen between Nodak and Otter Tail that  
13 you're aware of?

14 A. That I'm aware of.

15 Q. Okay. And you were asked on redirect about the  
16 service area agreement, and I believe you testified to  
17 that you believe that is a contract between Nodak and  
18 Otter Tail?

19 A. That was my statement, yes.

20 Q. Okay. And again, just so we're clear, the city  
21 of Drayton is not party to that contract; correct?

22 A. Correct.

23 Q. Now, have you commenced any action in any courts  
24 in North Dakota to enforce your contractual rights for  
25 an alleged breach of contract?

1           A.    No.

2           MR. SANDERSON:   Okay.   I have no further  
3 questions.   Thank you, Judge.

4           ALJ DAWSON:   Mr. Johnson.

5                                RE CROSS EXAMINATION

6           BY MR. JOHNSON:

7           Q.    In talking about development around communities,  
8 what's the difference between like a Drayton and a Minto  
9 for how you plan?

10          A.    An interstate, for one thing.   The -- you know,  
11 some small towns just don't expand.   There's no new  
12 housing getting built.   There might be a grain elevator  
13 or something like that.   But other communities do have  
14 some potential for expansion so you would -- you would  
15 look at that distribution system considerably  
16 different --

17          Q.    Okay.   Other than --

18          A.    -- based on best guess judgments.

19          Q.    Sure.   Other than interstate, is there much of a  
20 difference in population between Drayton and Minto?

21          A.    I think Drayton is larger, but not much.  
22 Insignificantly compared to a Grand Forks or Fargo or  
23 Bismarck.

24          Q.    Sure.   So you believe that the service agreement  
25 is a good, solid contract between you and Otter Tail

1 Power?

2 A. I do.

3 Q. Okay. How do you deal with paragraph 2 in the  
4 fact that it says:

5 "The intent being to avoid any transfer of  
6 customers when such areas may be annexed by  
7 the municipalities"?

8 Doesn't that say that if the cities annexes part  
9 of it, you get to keep your customers and they get to do  
10 what the city gets to do with their franchise?

11 A. I think what that gets to is that the -- when  
12 the maps were drawn, they were drawn outside the city  
13 limits. And so as they -- in that periphery outside the  
14 city limits, if it was a Nodak customer currently, then  
15 it would become an Otter Tail customer after that  
16 annexation in the first contract. The second one was  
17 let's negotiate. But then once you get beyond that  
18 boundary, I think that's the difference.

19 Q. And you feel like the service agreement is clear  
20 and unambiguous, everything in there is very clear and  
21 it deals with everything? There's no question, this  
22 should be able to answer all areas?

23 A. I think it's fairly clear. However, you know,  
24 if you were to redo this today, it would probably be  
25 more than four pages long. I don't know any legal

1 document that's less than four pages long, other than  
2 birth certificate.

3 (Laughter)

4 Q. Along those lines, if it would be redone today,  
5 would those maps look like they look like, or would they  
6 have legal descriptions of sections and quarter sections  
7 and specifically defined an area by legal description  
8 rather than a crayon or pencil drawing on a sheet of  
9 paper that nobody can tell where the line is?

10 A. I'm sure they would be drawn with AutoCAD or  
11 some sort of mapping software that would be right down  
12 to the GPS coordinates, yes. But that technology was  
13 not available back in 1960.

14 Q. Sure. And how is it that we know for  
15 100 percent certain that that line was drawn in the  
16 right place and that this isn't actually within the  
17 original area that Drayton was supposed to have?

18 A. Are you asking --

19 Q. There's --

20 A. -- it's been modified or --

21 Q. No, no. There's no GPS, there's no legal lot  
22 descriptions, there's nothing on that map other than a  
23 line. And I'm assuming -- what I'm asking is: Other  
24 than guessing by looking at, you know, line to line on  
25 the map on what is excluded in that quarter section, or

1       whatever size area that is, how do we know that that's  
2       completely out of there and not in there?

3           A.    Because I think you can see the interstate  
4       highway on there and it goes down the interstate.  
5       Whether it's down the middle or -- the line isn't  
6       exactly straight, but to me it's pretty obvious that it  
7       was meant to be that the interstate was the dividing  
8       line.

9           Q.    So it's not straight, it's crooked, but you're  
10      really sure so that's why we know it's not in there?

11          A.    It's crooked within the confines of a roadway.  
12      It's not crooked within off on a quarter section or a  
13      half mile or something like that.  It's -- it's small  
14      but it's not that small.

15          Q.    And I guess maybe I need to look at it again.  
16      What roadway is it on?

17          A.    I-29.

18          Q.    Okay, that is on the map.  All right.

19                MR. JOHNSON:  No further questions.

20                ALJ DAWSON:  Commissioner Kroshus.

21                COMMISSIONER KROSHUS:  Okay.  I just have a  
22      couple.  It was just prompted by questions you were  
23      asked.

24                   Does Nodak ever -- and I don't know if Grand  
25      Forks would -- if this would be applicable or not

1 applicable, but let's -- just to make it easy, outside  
2 of Grand Forks, does Nodak ever vote at city council  
3 meetings in, whether it's Thompson or --

4 THE WITNESS: No. We're not party to vote on  
5 it.

6 COMMISSIONER KROSHUS: Okay. And maybe -- but  
7 it just made me think. On the grain bins, the  
8 three-phase service, so the transformer is sized to that  
9 facility. But is it true that transformers are normally  
10 sized to a specific, just to the specific customer, or  
11 are they sized for pushing more load downstream or  
12 expansion as well?

13 THE WITNESS: For certain customers or members,  
14 they're sized for just that specific one. For example,  
15 in a residential development, we may have three or four  
16 houses coming off of one transformer. So the first one  
17 in there would be sized for the larger development. But  
18 the line going in there makes more of a difference than  
19 the transformer does.

20 COMMISSIONER KROSHUS: Okay. So it's really  
21 about the line, not the transformer?

22 THE WITNESS: Right.

23 COMMISSIONER KROSHUS: Okay. And just to make  
24 sure I've got my dates right. So on February 23, 2019,  
25 CEI contacts Nodak; June of 2019, there's this city

1 council meeting that I believe you had staff present at;  
2 August 19, 2019, the McFarland's Addition was annexed.

3 When did the conversation break off with Love's  
4 or you were -- when were you -- when did they indicate  
5 that they wanted service from Otter Tail instead?

6 THE WITNESS: Prior to the -- would have been in  
7 June of 2019.

8 COMMISSIONER KROSHUS: So before or after the  
9 city council meeting? Do you remember?

10 THE WITNESS: Before.

11 COMMISSIONER KROSHUS: Before? Okay. Then the  
12 city council meeting. Okay. I think I've got it.

13 Do you have any -- I can look this up. There's  
14 a Grand Forks Herald article on exhibit -- is it Exhibit  
15 C? At any rate, it's the announcement of Love's Truck  
16 Stop. Or maybe it's a part of Exhibit 1. So the  
17 question is -- it's not dated. And I can -- I can track  
18 it down, but do you know offhand? I see the temp is  
19 79 degrees so I'm guessing it wasn't nine months out of  
20 the year in North Dakota. We'll call it June, July.

21 THE WITNESS: I don't know the date of the  
22 article.

23 COMMISSIONER KROSHUS: And I can look that up so  
24 that's fine. No other questions. Thank you.

25 ALJ DAWSON: Commissioner Fedorchak.

1           COMMISSIONER FEDORCHAK:  Some of the questions  
2 make me curious.  So the service agreement is a  
3 contract.  What are your -- what's your potential for  
4 going against Otter Tail for breach of contract since  
5 they're clearly, under your interpretation of this, and  
6 even according to the map, operating outside of the  
7 service area agreement -- in your territory in the  
8 service area agreement?

9           THE WITNESS:  What's our opportunity?

10          COMMISSIONER FEDORCHAK:  Yeah.

11          THE WITNESS:  I mean, I think we are first  
12 looking at a remedy from this body, and after that we'll  
13 have to have some conversations with the attorneys  
14 about, I mean if we're unsuccessful here, look at what  
15 our next step might be.

16          COMMISSIONER FEDORCHAK:  Okay.  And then on the  
17 -- on your discussion with Brian, I just want to make  
18 sure I'm understanding it too, because I stumbled over  
19 this the first time.  But on the paragraph where it  
20 talks about -- paragraph 2, "The company shall serve all  
21 territory located within and adjacent to urban areas as  
22 outlined on attached maps, the intent being to avoid any  
23 transfer of customers when such areas may be annexed by  
24 municipalities."

25                 So the envision was, the Drayton -- on the map,

1 the Drayton city limits is outlined in black, and then  
2 you go out, the service area agreement says, no more  
3 than a mile, I don't know how far it is, but around  
4 that, and provide that additional territory that goes  
5 for the company. And it's within -- and then you draw  
6 the red boundary, and anything beyond that is yours.

7 Your interpretation of number 2 is that anything  
8 that is annexed would likely be that territory between  
9 the Drayton city limits on this map and the red boundary  
10 and that you've already granted, under this agreement,  
11 that that would go to the company --

12 THE WITNESS: That's correct.

13 COMMISSIONER FEDORCHAK: -- Otter Tail, in this  
14 case?

15 THE WITNESS: Yes.

16 COMMISSIONER FEDORCHAK: And then -- so your  
17 issue here today is this now is going outside of that  
18 boundary --

19 THE WITNESS: Right.

20 COMMISSIONER FEDORCHAK: -- and annexing  
21 property. And so your agreements where you'd kind of  
22 just go along with it under the service agreement,  
23 that's not -- doesn't apply to this situation?

24 THE WITNESS: Right. That applies to the area  
25 in between the city limits on the map and the red

1 boundary on the map.

2 COMMISSIONER FEDORCHAK: Yeah. Okay.

3 THE WITNESS: If it would apply to stuff beyond  
4 the red boundary, there would be no reason to have this  
5 agreement, period.

6 COMMISSIONER FEDORCHAK: Sure. Thank you.

7 ALJ DAWSON: Commissioner Christmann.

8 COMMISSIONER CHRISTMANN: Just one line. To the  
9 extent that the line on the map is not precise, am I  
10 understanding your testimony correctly that the  
11 vagueness might involve whether it's meant to be down  
12 the middle of the interstate as opposed to the north or  
13 south lane or the north or south right-of-way, but that  
14 it's clearly the interstate and that the McFarland  
15 Addition lies to the west of that line no matter how the  
16 vagueness is interpreted?

17 THE WITNESS: That's exactly my testimony, yes.

18 COMMISSIONER CHRISTMANN: Thank you.

19 ALJ DAWSON: Any further questions?

20 MS. RADERMACHER: Yes, just briefly, because we  
21 did touch a little bit on the questions that I had.

22 REDIRECT EXAMINATION

23 BY MS. RADERMACHER:

24 Q. But my understanding, based on the specs that  
25 were provided to you by CEI, they actually wanted a

1 separate transformer on the property serving the Love  
2 station; correct?

3 A. Those were conversations had with the  
4 engineering department. I would assume that would be  
5 the case. So for a three-phase service, they would want  
6 their own transformer, yes.

7 Q. Okay. And the specs kind of called for, is your  
8 understanding, that there would be a transformer, it was  
9 just a question of whether or not a pad would be  
10 included or not included?

11 A. Right. It's shown on their -- on their plot  
12 plan.

13 Q. Okay. And so is that pretty typical, though?  
14 And granted, I guess it's more of an engineering  
15 question, but pretty typical for a three-phase service,  
16 especially one that would have load like Love's, for  
17 example, they would have a separate transformer kind of  
18 built into their specs?

19 A. Typically, yes.

20 Q. And so when you're sizing something out, per se,  
21 like on that grain bin transformer, that would be  
22 specific to the grain bin transformer? Accurate?

23 A. (No audible response.)

24 Q. And so it would be, as you said, I think --  
25 well, and as I think Mr. Breidenbach also testified to,

1 that you size the line different in anticipation and --

2 MR. SANDERSON: Judge, I'm going to object to  
3 the leading form of these questions, and also beyond the  
4 scope of any recross or re-questioning.

5 MS. RADERMACHER: This is relative to the  
6 question that Commissioner Kroshus did ask regarding  
7 sizing the transformer versus sizing the line.

8 ALJ DAWSON: Well, I'll allow it for -- within  
9 the scope, but they are fairly leading questions.

10 MS. RADERMACHER: Okay. I apologize.

11 BY MS. RADERMACHER:

12 Q. Okay. So sizing the line. So did you size the  
13 line differently here in anticipation of development?

14 MR. SANDERSON: Objection. Foundation for this  
15 witness as to the timing and decision-making on that.  
16 He's testified multiple times he doesn't even know when  
17 the line was installed.

18 MS. RADERMACHER: I'll withdraw the question,  
19 Your Honor.

20 Q. There was also a question regarding breach of  
21 contract. Has a breach of contract been taken off the  
22 table as a possible alternative in this case?

23 A. No.

24 MS. RADERMACHER: And I think that every other  
25 question I had has been made by the Commission and

1 answered so I have no further questions.

2 MR. SANDERSON: No questions.

3 ALJ DAWSON: Any further questions?

4 Seeing none, you may step down.

5 THE WITNESS: All right.

6 ALJ DAWSON: Do you have any further witnesses?

7 MS. RADERMACHER: I do not. Protestant rests  
8 unless rebuttal.

9 ALJ DAWSON: Mr. Sanderson, we're about an hour  
10 and ten minutes in. You have a witness? I'm trying to  
11 weigh whether we should take a break now or in, like you  
12 said, a half hour.

13 MR. SANDERSON: I mean, I certainly know -- is  
14 Charles Olson on line? My questioning of my first  
15 witness, Mayor Olson, will be fairly short, but it's up  
16 to you and the Commission.

17 ALJ DAWSON: I think we'll go ahead and take one  
18 witness and then take a break.

19 MS. RADERMACHER: Your Honor, may I approach?

20 ALJ DAWSON: Yes, you may.

21 MS. RADERMACHER: Here are the original Exhibits  
22 6 through 11.

23 ALJ DAWSON: Thank you.

24 He's on the screen right there.

25 Mr. Olson?

1 MR. OLSON: Hello.

2 ALJ DAWSON: Yes. I'm Judge Dawson. And I'm  
3 required by law to tell you the penalties for perjury in  
4 this state. Have you heard them already today?

5 MR. OLSON: I have.

6 ALJ DAWSON: So you understand what perjury is  
7 and the penalties for it?

8 MR. OLSON: I do.

9 ALJ DAWSON: Understanding so, do you promise or  
10 swear that the testimony that you're about to give will  
11 be the truth, the whole truth, and nothing but the  
12 truth?

13 MR. OLSON: I do.

14 ALJ DAWSON: Mr. Sanderson, you may begin.

15 MR. SANDERSON: Thank you, Your Honor.

16 **CHARLES OLSON,**

17 being first duly sworn, was examined and testified as  
18 follows:

19 DIRECT EXAMINATION

20 BY MR. SANDERSON:

21 Q. Mayor Olson, can you please state your full name  
22 and address?

23 A. Charles Allen Olson, 311 North Main Street,  
24 Drayton.

25 Q. And are you currently the mayor of the city of

1 Drayton?

2 A. Yes, I am.

3 Q. How long have you lived in Drayton?

4 A. My whole life. 56 years.

5 Q. And how long have you been the mayor of the city  
6 of Drayton?

7 A. It will be three years in June.

8 Q. Okay. And for those who may not know or have  
9 been to Drayton before, can you tell us a little bit  
10 about your city?

11 A. Drayton is a small community about 45 miles  
12 north of Grand Forks, right between I-29 and the Red  
13 River.

14 Q. Now, Mayor Olson, I want to start, what's been  
15 already admitted into this case is Otter Tail Exhibit  
16 No. 1. And it is ordinance number 51, a franchise  
17 between the City of Drayton and Otter Tail. Are you  
18 familiar with this document?

19 A. Yes, I am.

20 Q. And was this a franchise agreed upon between the  
21 City of Drayton and Otter Tail?

22 A. Yes. This is prior to my term as mayor, but  
23 reading through it, that's how it appears to me.

24 Q. Okay. And Otter Tail Exhibit 1, the franchise,  
25 is dated May 3rd of 2011; is that correct?

1           A.    Yes.

2           Q.    And under the terms of the franchise agreement,  
3 is Otter Tail obligated to provide electric service to  
4 customers in the city?

5           A.    Yes.

6           Q.    Now, Mayor Olson, we're here today regarding  
7 proposed customer, the Love's Truck Stop, that they  
8 intend to construct a facility near Drayton. Are you  
9 familiar with that proposed facility?

10          A.    Yes, very familiar.

11          Q.    Okay. When did you as mayor become first aware  
12 that Love's was considering building a truck stop near  
13 Drayton?

14          A.    I believe it was shortly after I became mayor in  
15 June of 2018, so it was probably July or August of '18.

16          Q.    Okay.

17          A.    Heard rumors that they were looking at property  
18 here in Drayton.

19          Q.    Okay. And just so I'm clear, Mayor, that's June  
20 or July of 2018; correct?

21          A.    Yes. I hadn't spoke to Love's at that point but  
22 I heard rumors from a landowner that they had been  
23 visiting on it, very excited about it.

24          Q.    Okay. When did you first have any discussions  
25 on behalf of the city with Love's regarding that

1 proposed facility?

2 A. I don't remember the actual date. I would think  
3 it was later that summer of 2018, but I -- forgive me, I  
4 don't -- I don't know exactly when that was. I was  
5 contacted by Steve Walters, who I think is titled  
6 project manager for Love's.

7 Q. Okay. And can you just explain to the  
8 Commission what has been your involvement with the city  
9 with respect to the Love's project?

10 A. Well, Steve Walters contacted me. And right  
11 from the beginning, he was very pro community-minded.  
12 And he told me that before they purchased the -- that  
13 property, he would like it annexed into the city. I  
14 explained to him that we had, like, a tax abatement  
15 program, and he said, we don't want any part of that, we  
16 want to be good members of the community, we want to pay  
17 all of our taxes. But they wanted to be annexed into  
18 the community so that we could provide them with water  
19 and sewer service.

20 Q. And, Mayor Olson, was that conversation with  
21 Love's about annexation, did that occur in your  
22 conversations in 2018?

23 A. I'm very sure it was. It was probably one of  
24 the first conversations we had.

25 Q. Okay. And let me ask you, did -- as mayor, did

1 you hold a public meeting in Drayton to discuss the  
2 Love's facility?

3 A. Yes, we did, in the school gymnasium.

4 Q. Okay. And do you recall when the city of  
5 Drayton had a public meeting to discuss the Love's  
6 potential expansion into the city?

7 A. I think I have it here in my notes, if you give  
8 me a moment, somewhere.

9 And you may have to forgive me, but I can't find  
10 it. But it -- it -- yeah, I -- I apologize, I don't  
11 know when that was. It was -- I think it was the end  
12 of 2018 or early 2019. And I really apologize but I  
13 don't have that.

14 Q. Does January 6, 2019, coincide with your  
15 recollection?

16 A. That very well could be, yes.

17 Q. Well, and with respect to that public meeting,  
18 before I ask you about that, your testimony is the  
19 decision to annex the property into the city had been  
20 made before the public meeting?

21 A. Yeah. Well, we had talked about it. I -- I  
22 don't -- I don't think that I signed the annexation and  
23 all that by then, but we had talked about it right away,  
24 early on. Steve Walters had told me they wanted to be  
25 annexed into the city.

1 Q. Yeah. And I guess, Mayor, my question was poor,  
2 but it should have been -- the discussions regarding  
3 Love's intention to have the property annexed in had  
4 been had prior to the January 2019 public meeting?

5 A. Yes.

6 Q. Okay.

7 A. Definitely. Yeah, the discussion. Yeah.

8 Q. And can you just explain to the Commission, the  
9 property that Love's selected for construction of that  
10 facility, where was that property located?

11 A. That was right west of Drayton across the  
12 interstate. It would be south of Highway 66 and west of  
13 I-29.

14 Q. Okay. And when -- again, and I believe you've  
15 -- when Love's first approached you and you had the  
16 initial discussions about that, was that property  
17 located within the city of Drayton?

18 A. At that time it was not.

19 Q. Okay. Now, Mayor Olson, I believe you have in  
20 front of you Otter Tail Exhibit 2. Do you recognize  
21 that document?

22 A. Let me find it. Yes.

23 Q. And Otter Tail Exhibit 2 is -- it's a  
24 McFarland's Addition plat and it also has some Drayton  
25 city council approval dated August 12, 2019. And that's

1 signed by Charles Olson, mayor. Was that you?

2 A. Yes, it was.

3 Q. And that's your date on Exhibit 2, dated  
4 August 15, 2019?

5 A. Correct.

6 Q. And do you recall, who owned the property that  
7 Love's wanted to build their facility on?

8 A. Tyler McFarland.

9 Q. Okay. And did Mr. McFarland submit a plat for  
10 that property for annexation into the city of Drayton?

11 A. Yes, he did.

12 Q. Okay. And based on what we see in Otter Tail  
13 Exhibit 2, that was approved at a city council meeting  
14 by the city council in August of 2019?

15 A. Yes.

16 Q. Why did the City of Drayton approve annexation  
17 of this property?

18 A. Well, again, first of all, Love's wanted to be  
19 part of the city so we could provide them services, but  
20 you have to understand the opportunity this is for a  
21 small community. Steve Walters, again, the project  
22 manager, said that they can employ up to 40 people.  
23 Well, in a people of 750 people, this is the biggest  
24 economic thing to hit this community since American  
25 Crystal in the 1960s. It's just a huge opportunity.

1 And so, you know, we definitely want this to happen.

2 Q. Did anyone appear and oppose the annexation of  
3 this property at the city council meeting?

4 A. Not that I remember.

5 Q. And so as we see from Exhibit 2, the McFarland's  
6 property was eventually -- and the annexation was  
7 approved by the City of Drayton. Was that property  
8 subsequently sold?

9 A. Yes.

10 Q. And who purchased that property?

11 A. Well, it -- I don't recall the name. It's not  
12 Love's. I believe it's a holding company or the parent  
13 company of Love's, and I -- the name I can't recall, but  
14 it was for Love's.

15 Q. Okay. And that was -- your understanding is a  
16 company affiliated with Love's purchased that property  
17 for construction of the Love's Truck Stop?

18 A. Correct.

19 Q. Okay. Now, Mayor Olson, have you been  
20 monitoring or listening to the hearing that's occurred  
21 today?

22 A. About 90 percent of it.

23 Q. Okay. As part of that, did you hear testimony  
24 by a Nodak witness regarding conversations that took  
25 place between the city and Nodak regarding the

1 annexation and service for this property?

2 A. Yes.

3 Q. Can you just explain to the Commission what you  
4 recall about your communications with Nodak regarding  
5 service to the Love's Truck Stop and McFarland's  
6 Addition?

7 A. Well, I think that Mr. Einarson's testimony was,  
8 from my recollection, spot on. You know, we met a few  
9 times; never in person, always on the phone. We had  
10 different conversations. And I do remember asking him  
11 not to -- I don't know if the right term is protest  
12 this, because this is huge for the city of Drayton and I  
13 didn't want any roadblocks. I'm not saying that it was  
14 a deal breaker for Love's, I'm not saying that at all.

15 If I recall correctly, and I think I do,  
16 Mr. Walters told me that they figured they could save  
17 \$30,000 a year with Otter Tail as opposed to Nodak.  
18 Well, that's real money. And I just didn't want  
19 anything like that to come up and possibly make them  
20 change their mind. And again, that was never suggested  
21 to me, but I just wanted to eliminate any possible  
22 roadblocks for them coming to town.

23 Q. How many times were you part of communications  
24 with Nodak regarding this service to the Love's?

25 A. Again, I would have to agree with everything Mr.

1 Einarson said, and I think it was three or four times.

2 Had I realized at the time that this was coming  
3 to this, I would have taken notes, to be honest, but I  
4 never foresaw this happening.

5 Q. But just so I understand your testimony, Mayor  
6 Olson, during one of your conversations you made it  
7 clear to Nodak and requested that they not challenge or  
8 do anything to interfere with Love's development of this  
9 project?

10 A. I most certainly did.

11 Q. Okay. Now, I'm going to ask you to look at  
12 what's been marked in this case as Otter Tail Exhibit 3.  
13 And this is a resolution that was passed by the City of  
14 Drayton regarding service to McFarland's Addition in  
15 April of 2020. Are you familiar with this document?

16 A. Yes.

17 Q. And again, is that your signature on the bottom  
18 of this document?

19 A. Yes, it is.

20 Q. Can you just explain why the City of Drayton  
21 passed a resolution authorizing electric service to  
22 McFarland's Addition?

23 A. Again, because I thought it was very important  
24 that Love's comes to town, and part of that was Otter  
25 Tail supplying power to them. And we wanted some kind

1 of documentation to -- I can't choose the right words  
2 here, but to reinforce that, that we wanted Otter Tail  
3 to supply power to that addition into the city and to  
4 protect our rights, because from what I believe, it's  
5 our decision to decide would supplies power.

6 Q. And does Otter Tail Exhibit 3 demonstrate the  
7 City of Drayton's decision as to who it wants to provide  
8 electric service to Love's Truck Stop in McFarland's  
9 Addition within the city of Drayton?

10 A. Yes.

11 Q. And the electric service provider the City of  
12 Drayton has selected to provide service to Love's in  
13 McFarland's Addition is Otter Tail Power; correct?

14 A. Correct.

15 Q. Now, has Nodak -- did Nodak approach the city  
16 seeking a franchise to serve customers?

17 A. I don't know that they officially requested one,  
18 but they did attend a meeting and ask about one.

19 Q. Okay. Was that the June 10, 2019, meeting where  
20 Steve Breidenbach of Nodak attended and inquired about  
21 the city granting a franchise to serve?

22 A. Yes, I believe so.

23 Q. Has the City of Drayton ever granted a franchise  
24 to provide electric service to Nodak?

25 A. No.

1 Q. Now, Mayor Olson, you've heard some testimony  
2 regarding a service territory agreement mentioned today  
3 and dated in 1968 between Nodak and Otter Tail. Are you  
4 aware of the City of Drayton ever signing or agreeing to  
5 be bound by that 1968 service area agreement?

6 A. Not to my knowledge. But, of course, I wasn't  
7 very old then.

8 Q. And at no time has Nodak ever approached you  
9 while you've been a member of the city council or mayor  
10 and asked the city to be bound by the terms of that  
11 service agreement?

12 A. That is correct, they have not.

13 Q. Mayor Olson, I have no further questions. Thank  
14 you.

15 ALJ DAWSON: Ms. Radermacher.

16 CROSS EXAMINATION

17 BY MS. RADERMACHER:

18 Q. Hello, Mayor Olson. Can you hear me?

19 A. Hello. Yes, I can.

20 Q. I apologize, I'm going to have to reposition, I  
21 think, a little bit here so I can be heard.

22 So you kind of discussed franchises with respect  
23 to Drayton. Are you aware of the law as it applies to  
24 franchises in the city limits?

25 A. Well, I had a conversation with our city

1 attorney, Steve Ekman, when -- when Nodak approached the  
2 city. And the way I understand it, and I could be  
3 mistaken, was that we issue a franchise but it's not  
4 exclusive, but it does guarantee then the company we  
5 might issue the franchise with has to supply power to  
6 the city. But it's not an exclusive contract, the way I  
7 understand.

8 Q. Okay. And so you would agree that it doesn't  
9 exclude another service provider from actually providing  
10 service within the city; correct?

11 A. The way I understand it, that would be correct.

12 Q. Okay. And so when it says "obligate" under  
13 franchise, that might be a fairly strong word, but it  
14 might be more appropriate to say permitted, that they  
15 are permitted to provide power within the city limits?

16 A. The company that's franchised?

17 Q. Well, in any sort of franchise, that they are  
18 permitted -- particularly if you look at your 2011  
19 ordinance, that they are permitted to provide service --  
20 or that they're permitted to construct plant and provide  
21 service within the city limits?

22 A. Well, again, from visiting with the city  
23 attorney, I believe they're permitted and obligated.  
24 Somebody has to supply power --

25 Q. Okay. But wouldn't the word "obligate" preclude

1 then anybody else from providing service in there and  
2 therefore making it not non-exclusive?

3 A. No. I don't believe so --

4 Q. Okay.

5 A. -- but not a lawyer.

6 Q. And in fact, obligate probably doesn't actually  
7 show up until the 2020 resolution for McFarland's  
8 Addition. Would you agree?

9 A. You know, you're asking me a question I don't --

10 Q. Okay.

11 A. I haven't been through everything that's ever  
12 been written on this.

13 Q. Okay. And understand, understand. I'm not  
14 trying to pick on you. I just wanted to -- you know,  
15 again, because obligate is a pretty strong word.

16 So who drafted the resolution relative to the  
17 extension of the franchise agreement that was, I think,  
18 April -- or August of 2019 -- or excuse me. This one  
19 would have been April of 2020. The resolution to annex  
20 was the August one. Do you recall?

21 A. I believe it was our city attorney. But I don't  
22 know that for sure but -- because we've -- you know,  
23 Steve Ekman is our city attorney and I consult him on  
24 many things. I honestly don't remember, but I believe  
25 it was him.

1 Q. Okay. Has Otter Tail helped you draft documents  
2 relative to the Love's contest?

3 A. I -- I believe that they probably did help Steve  
4 with some of the wording on this.

5 Q. Okay. And they also drafted the petition to  
6 intervene on behalf of the City of Drayton as well; is  
7 that correct?

8 A. I believe so.

9 Q. So was it the intent of the city with the 2020  
10 resolution to basically extend off of the ordinance  
11 that's dated back in 2011 granting Otter Tail a  
12 franchise?

13 A. Could you say that again?

14 Q. So was it the intent -- do the 2020 -- does the  
15 2020 resolution and the 2011 ordinance, are they tied  
16 together?

17 A. I'm sorry, that sounds like a legal question to  
18 me.

19 Q. Okay. But do they relate back to one another?  
20 Are you, essentially, saying under the franchise we  
21 granted you in 2011, we're further extending that  
22 franchise? Would you agree?

23 A. Yes, I do.

24 Q. Okay.

25 A. I guess you could say that, yes.

1 Q. Okay. And are you aware that your 2011  
2 ordinance actually subjects the franchise agreement and  
3 the matter -- or in matters, essentially, to that extent  
4 to the jurisdiction of the Public Service Commission?

5 A. Again, could you repeat that?

6 Q. And I apologize. I'm probably not phrasing it  
7 very well.

8 Are you aware that the ordinance that was passed  
9 in 2011 actually -- and maybe if I specifically state  
10 it. In one section of that contract, it specifically  
11 says that it's subject to any present or future laws of  
12 a regulatory nature enacted by the State of North Dakota  
13 or any amendment or addition to such laws and further  
14 shall be subject to the rules and regulations laid down  
15 by the Public Service Commission of the state of North  
16 Dakota.

17 Would you agree that that phrase is inside the  
18 2011 ordinance?

19 A. If you give me a moment so I can read it, I  
20 will.

21 Q. Yes, I would gladly. And it's under section 9.

22 A. Okay. I've got to find it here.

23 (Pause)

24 A. Yes, it does say that.

25 Q. Okay. Thank you.

1           Now, are you also familiar with, essentially,  
2 how the annexation process works?

3           A. Well, somewhat. I've only been part of one of  
4 them.

5           Q. Okay. So, essentially, annexation can occur by  
6 one of two modes. Either they petition to be annexed or  
7 the city could petition to annex; is that correct?

8           A. That's correct.

9           Q. Okay. And is it your understanding that if, for  
10 example, the city petitioned to annex, that,  
11 essentially, the only voice that's going to be in the  
12 room are the people that are being subject to the  
13 annexation; is that correct?

14          A. Well, I think typically that's how it works  
15 because they would be the only ones that may or may not  
16 object to it.

17          Q. Okay. Are you aware of any provision that would  
18 allow Nodak, at least as far as the annexation, to come  
19 in and object or voice a vote or -- if they don't own  
20 specific -- if they don't specifically own the property  
21 sought to be annexed?

22          A. If I could expand on this a little bit. You  
23 know, we talk about the city of Drayton. Well, you  
24 can't confuse that with the city of Grand Forks or the  
25 city of Fargo --

1 Q. And I apologize, Mr. Olson. I did ask a  
2 specific question so if you could just answer the  
3 specific question that I requested.

4 A. Anyone can come to our city council meeting and  
5 voice their opinion on anything.

6 Q. Okay. But they would not specifically have a  
7 vote that could veto the annexation; is that correct?

8 A. I believe that is correct.

9 Q. Okay. And in speaking with Mr. Walters, you  
10 said that he told you they would have, potentially, a  
11 cost savings of, like, \$30,000. Do you know where he  
12 got the numbers that he was comparing in order to be  
13 able to come up with that assessment?

14 A. I don't know. In one of the meetings we had  
15 with Nodak, I know he requested some numbers from them.  
16 So for me to tell you those were the numbers, I can't  
17 tell you that.

18 Q. Okay. So you're not entirely sure where he got  
19 -- where the difference was or how he came up with that  
20 cost savings?

21 A. No, I am not.

22 Q. Okay. And if Love's had wanted Nodak to serve  
23 this load, would you have asked Otter Tail Power to not  
24 interfere?

25 A. Yes.

1 Q. Even though they hold the franchise, you would  
2 have put your foot down and said not to interfere with  
3 this particular load?

4 A. I most certainly -- if Love's would have chose  
5 Nodak, I most certainly would have.

6 MS. RADERMACHER: Okay. I have no further  
7 questions.

8 ALJ DAWSON: Mr. Johnson.

9 MR. JOHNSON: I don't have any questions, Your  
10 Honor.

11 ALJ DAWSON: Commissioner Kroshus.

12 COMMISSIONER KROSHUS: Just one.

13 Good afternoon, Mr. Olson, or Mayor Olson, I  
14 should say. Did either Nodak or Otter Tail Power ever  
15 express a competitive advantage to you in terms of cost  
16 of service to the truck stop?

17 THE WITNESS: No. When rumors to this first  
18 started, they both contacted me wanting to provide  
19 service, and I -- I told them both, talk to Love's,  
20 because I thought Love's should decide who they want.  
21 And, you know, I'm sure at the time that they both told  
22 us -- told myself, you know, about their rates and their  
23 quality and things like this. And I just thought they  
24 were wasting their time because I wanted Love's to  
25 decide.

1           COMMISSIONER KROSHUS: Okay. Fair enough. At  
2 the January 6, 2019, meeting, was Otter Tail Power  
3 present at that? Do you recall?

4           THE WITNESS: I do not recall.

5           COMMISSIONER KROSHUS: Okay.

6           THE WITNESS: I don't recall.

7           COMMISSIONER KROSHUS: Okay. I'm trying to --  
8 and maybe you don't know, but from a timing standpoint,  
9 following that meeting, about six weeks later, CEI  
10 contacted Nodak and then, by June, had changed its mind,  
11 or Love's had changed its mind on service provider.  
12 Would you have any idea what triggered that? Or was it  
13 just the impression of cost?

14          THE WITNESS: No, I wouldn't let -- what was  
15 your other question before this? I'm sorry. Was that  
16 about the June 10 meeting? Because I actually have the  
17 minutes in front of me.

18          COMMISSIONER KROSHUS: The January 6 meeting of  
19 2019.

20          THE WITNESS: No. Sorry. Then I do not have  
21 those minutes.

22          COMMISSIONER KROSHUS: But I will ask, at the  
23 June meeting, were either -- Nodak was present; is that  
24 correct?

25          THE WITNESS: That is correct, yes.

1           COMMISSIONER KROSHUS: Was Otter Tail Power  
2 present?

3           THE WITNESS: Not in the minutes it doesn't say  
4 that.

5           COMMISSIONER KROSHUS: Okay. All right. I  
6 don't have any other questions. Thank you, Mayor.

7           ALJ DAWSON: Commissioner Fedorchak.

8           COMMISSIONER FEDORCHAK: Thank you, Mayor. I  
9 think your answers have been really thorough and the  
10 questioning has covered everything that I was interested  
11 in so I don't have any more questions for you. Thank  
12 you.

13          ALJ DAWSON: Commissioner Christmann.

14          COMMISSIONER CHRISTMANN: Do you quarrel with my  
15 understanding of the testimony that we heard this  
16 morning that I believe it's a Cenex, some type of gas  
17 station north of Highway 66, is operating and is, in  
18 fact, in the city limits of Drayton?

19          THE WITNESS: It is in the city limits of  
20 Drayton.

21          COMMISSIONER CHRISTMANN: Okay. And do they  
22 have a franchise?

23          THE WITNESS: Does Nodak have a franchise?

24          COMMISSIONER CHRISTMANN: Nodak doesn't have a  
25 franchise to serve that; correct?

1 THE WITNESS: Nodak -- I believe Nodak is  
2 serving that.

3 COMMISSIONER CHRISTMANN: But they don't have a  
4 franchise with the city, or do they?

5 THE WITNESS: No. That was -- see, they were  
6 serving that before they were annexed in.

7 COMMISSIONER CHRISTMANN: Okay. And do you  
8 provide water and sewer to them since they're in the  
9 city, I presume?

10 THE WITNESS: That -- and that is why they want  
11 to be annexed in.

12 COMMISSIONER CHRISTMANN: The Cenex did?

13 THE WITNESS: They're on rural water but they --  
14 and they had a septic system and they wanted city sewer,  
15 so they requested to be annexed in.

16 COMMISSIONER CHRISTMANN: Okay. And I think  
17 that is my only question. But I do appreciate your  
18 public service and compliment you. Looks like there's  
19 pretty good deer hunting in the Drayton area.

20 THE WITNESS: You should see the wall behind  
21 you.

22 COMMISSIONER CHRISTMANN: I'd like to.

23 UNIDENTIFIED SPEAKER: Turn that computer around  
24 -- that camera.

25 (Simultaneous speaking)

1 UNIDENTIFIED SPEAKER: Well, that made my day.

2 ALJ DAWSON: Mr. Sanderson.

3 REDIRECT EXAMINATION

4 BY MR. SANDERSON:

5 Q. Just briefly, Mayor Olson. You were asked at  
6 the end of cross-examination by Nodak's attorney some  
7 hypotheticals about what you could or should have or may  
8 have done. If Love's had wanted Nodak to serve, the  
9 City of Drayton could grant Nodak a franchise to serve  
10 within the city limits; correct?

11 A. I believe that's correct.

12 Q. And if the City of Drayton wanted specifically  
13 Nodak to serve the Love's Truck Stop in McFarland  
14 Addition, the City of Drayton could pass a resolution  
15 authorizing it to serve there. Is that fair?

16 A. That is what I believe from visiting with our  
17 attorney, Steve Ekman.

18 Q. Okay. But what we know, what -- and I'll take  
19 you away from the hypotheticals here, Mayor Olson. At  
20 no point in time has the City of Drayton ever granted  
21 Nodak a franchise and has not passed a resolution  
22 authorizing Nodak to serve Love's Truck Stop in  
23 McFarland's Addition; correct?

24 A. That is correct.

25 MR. SANDERSON: No further questions.

1 ALJ DAWSON: Any further questions?

2 MS. RADERMACHER: I have nothing further.

3 ALJ DAWSON: Any further questions?

4 Seeing no further questions, you may step down  
5 or turn off your monitor, whatever you like.

6 MR. SANDERSON: Thank you, Mayor.

7 ALJ DAWSON: I think we'll take a break right  
8 now till about 25 minutes after the hour, based on that  
9 clock right there. They're all different. Okay.

10 (Recess)

11 ALJ DAWSON: Well, we're back on the record and  
12 it's 3:30'ish p.m.

13 And, Mr. Sanderson, your next witness, please.

14 MR. SANDERSON: Thank you, Judge. At this time  
15 Otter Tail would call Steve Walters via teleconference.

16 ALJ DAWSON: Mr. Walters.

17 MR. WALTERS: Hello?

18 ALJ DAWSON: Hello, Mr. Walters.

19 MR. WALTERS: Yes, Sir.

20 ALJ DAWSON: Were you here for my previous  
21 admonitions as to perjury?

22 MR. WALTERS: Yes.

23 ALJ DAWSON: So you understand what perjury is  
24 and the penalties for it?

25 MR. WALTERS: Yes, Sir.

1 ALJ DAWSON: Understanding so, do you promise or  
2 swear that the testimony that you're about to give will  
3 be the truth, the whole truth, and nothing but the  
4 truth?

5 MR. WALTERS: Yes, Sir.

6 ALJ DAWSON: Mr. Sanderson, you may begin.

7 MR. SANDERSON: Thank you.

8 **STEVE WALTERS,**

9 being first duly sworn, was examined and testified as  
10 follows:

11 DIRECT EXAMINATION

12 BY MR. SANDERSON:

13 Q. Good afternoon, Mr. Walters. Could you please  
14 state your full name and business address for the  
15 record?

16 A. Steven Walters. My business address is 10601  
17 North Pennsylvania Avenue, Oklahoma City, Oklahoma,  
18 73120.

19 Q. And whom are you employed by?

20 A. Love's Travel Stops.

21 Q. And can you explain briefly to the Commission  
22 what Love's Travel Stop does and your business?

23 A. Yes, Sir. Love's is a privately-owned company  
24 that was started in 1964 by Tom Love. So we've been in  
25 business now for 57 years. We're still owned by the

1 same family. Three of his four children still run the  
2 company. And we even have what we refer to as a gen  
3 three, which would be his grandchildren coming up in the  
4 company now as well playing different roles.

5 Overall, we're -- we're in the top 20 of Forbes  
6 privately-held companies. We have over 550 stores  
7 across the United States. And as of now, we employ  
8 about 30,000 people in 41 different states.

9 Q. And what is your position with Love's?

10 A. My title is real estate project manager.

11 Q. And can you just explain to the Commission what  
12 your job responsibilities entail?

13 A. Yes, Sir. I identify sites for potential new  
14 development. And then once they're identified and we  
15 decide to move forward, I work with the cities or  
16 counties, whatever government agency I need to work  
17 with, to get approvals and permits and proper zoning and  
18 all that kind of stuff we need so we can get to the  
19 construction phase.

20 Q. Okay. And, Mr. Walters, in your position as  
21 project manager for Love's, what geographical area do  
22 you serve?

23 A. I worked with Love's now for a little over eight  
24 years, and during those eight years I've worked in 14  
25 different states. But right now my main focus is what I

1 refer to as the northern states of North Dakota, South  
2 Dakota, Wyoming, Montana, Nebraska, Idaho. And I'm  
3 still working in some other states, but my main focus  
4 right now is up north.

5 Q. Okay. And generally, can you explain the  
6 different factors Love's considers when selecting a  
7 location for a new facility?

8 A. Yeah. The first thing we do is we always listen  
9 to our customers because, obviously, they're the ones  
10 that are going to use us. They are real good at letting  
11 us know where there's gaps in services for the  
12 professional truck drivers. And then, you know, we look  
13 at that and see what our volumes are.

14 And then we -- we'll physically drive up and  
15 down the interstate in those areas and see if we can  
16 find a -- find a place to build.

17 So what I look for, in looking for a place to  
18 build, is if there's property available, if that  
19 property is available, is it actually for sale and can  
20 it actually be developed on?

21 And then also we look at, one of the big things  
22 for us is we look at public utilities, because once we  
23 get into doing lagoons and wells, there's all kinds of  
24 government regulations and monitoring and that kind of  
25 stuff that we don't want our operators to have to deal

1 with. So we prefer to be on public utilities whenever  
2 we can.

3 Q. And, Mr. Walters, we're here today regarding a  
4 facility, Love's facility, that's being constructed near  
5 Drayton, North Dakota. Are you familiar with that  
6 project?

7 A. Yes, Sir.

8 Q. What has been your involvement with the Drayton  
9 Love site?

10 A. I've been involved with the Drayton Love site  
11 since 2018 from identifying the site to where we are  
12 today with this hearing.

13 Q. And can you just kind of give the Commission a  
14 timeline of Love's, when you began exploring the Drayton  
15 location?

16 A. Yes, Sir. My first trip in that area was back  
17 in, I believe, June of 2018, and so that would have  
18 probably been the first time that -- well, not probably.  
19 I know that was the first time because I have emails to  
20 the broker asking him to investigate properties in that  
21 area, and that was June of 2018.

22 Q. And can you explain how Love's selected the  
23 property location near Drayton?

24 A. Yes. Again, you know, we listen to our  
25 customers. There was a big gap in services for truck

1 stops, whether it be us or our competition, from Canada  
2 down to Grand Forks. So I've driven that stretch of  
3 I-29 several times, looking at the off ramps and the  
4 different communities in that area.

5 There are, you know, other options other than  
6 Drayton, except those options are -- have some  
7 hindrances to development, whether it be railroad  
8 tracks, whether it be wetlands, but the biggest  
9 hindrance is a lot of those small cities don't have the  
10 public utilities that can handle our capacity. So  
11 that's how we ended up in Drayton.

12 Q. Okay. When you narrowed in and selected the  
13 Drayton location, was that property located in the  
14 Drayton city limits?

15 A. When I first found the property, I didn't know  
16 at the time whether it was or wasn't, but after we  
17 started investigating, that I quickly learned that it  
18 was not in the city limits.

19 Q. Okay. And just for the record, Mr. Walters,  
20 throughout the course of this testimony at this hearing,  
21 that property's been referred to as the McFarland's  
22 Addition property. Are you familiar with the  
23 McFarland's Addition?

24 A. Yes. Yes, I am. The reason it's named that is  
25 because the gentleman that sold it to us, his last name

1 was McFarland. The property had to be re-platted in  
2 order for us to take ownership of the property. So we  
3 couldn't re-plat the property on our behalf because we  
4 didn't own the property. So the way the city ordinances  
5 were written, the owner had to make that request, and so  
6 he made that request on our behalf, and that's how the  
7 McFarland's Addition came about.

8 Q. So if I refer to that property as the McFarland  
9 Addition, you'll understand that's the property Love's  
10 selected and intends to build their facility on near  
11 Drayton?

12 A. Yes, Sir.

13 Q. Okay. You mentioned that Love's, you know, was  
14 looking at having the property annexed into the city  
15 limits. Why does Love's prefer to have property located  
16 in city limits?

17 A. Well, there's multiple reasons. As I've said, I  
18 worked in -- for eight years now, done probably close to  
19 40 or 50 different stores. And I would say 99 percent  
20 of the time, a city is not going to let you use their  
21 public utilities unless you're in the city limits, which  
22 makes sense, because we're taxing those services and  
23 they want something in return, and that something in  
24 return is tax dollars.

25 In Drayton's case, when we first met with them,

1 I learned that they did have public utilities and that's  
2 the -- and they did have the capacity to serve our  
3 needs, and so we became annexed into the city so we  
4 could utilize those utilities.

5 Q. Okay. Is --

6 A. And then the other thing is, is, you know, truck  
7 stops have a bad wrap, you know, and probably rightfully  
8 so from some of the shenanigans that took place in the  
9 '70s and '80s. So we strive to be a good corporate  
10 citizen whenever we come into a community. And for us,  
11 what that means is we don't want to be a detriment in  
12 any way.

13 So as the mayor testified earlier, there was a  
14 little bit of tax abatement money, but it was -- I don't  
15 think it was double digit money, to be honest with you.  
16 It was minimal. And, quite frankly, you know, we didn't  
17 need that so we didn't take it.

18 The other thing is, is my understanding from the  
19 mayor, after we did further investigation, was that we  
20 did not have to annex and we could still use their  
21 utilities with the way their ordinances were written.  
22 And, again, that's just not the way Love's does  
23 business.

24 After our first official meeting with the City  
25 of Drayton, which I believe has been referred to as the

1 January 6 meeting, the mayor asked if I would hold a  
2 meeting later in the month to have the public -- have  
3 the citizens come to the meeting in a public setting,  
4 which, as he mentioned, was held at the school. And at  
5 that time, I had already committed to the city that we  
6 would be willing to annex and wanted to annex because,  
7 at the public meeting on the 26th, I believe it was, I  
8 gave a slide presentation showing the tax dollars that  
9 would help benefit Drayton.

10 Q. And was Love's, did you make the decision to  
11 have that property annexed into the city?

12 A. Myself, did I make the decision myself?

13 Q. Well, I mean, did Love's want or request that  
14 property be annexed into the city?

15 A. Yes. We made the request. But as I said, at  
16 the time I think -- I have to go back and look, but I  
17 think Mr. McFarland may have still owned the property at  
18 that time so he may have had to do it on our behalf.  
19 But yes, it was nobody else's decision.

20 I have -- we have a, I think it's a five-page  
21 document -- it fluctuates from four to six pages  
22 sometimes, you know, formatting and all that crap -- but  
23 of questions that we ask a city whenever we first start  
24 development. Because that's the first step we take, is  
25 we go sit down with the city decision-makers, the

1 engineers, zoning officers, whatever they may be, and we  
2 go over a litany of questions.

3 And that meeting took place, again, I believe  
4 it's what's being referred to as the January 6 meeting.  
5 And in that meeting notes that I have, it shows that we  
6 discussed annexation in that meeting.

7 Q. And let me ask you this, Mr. Walters. Was Otter  
8 Tail ever involved in Love's decision to have the  
9 McFarland's Addition property annexed into the city of  
10 Drayton?

11 A. No, not at all. Because like I said, we -- we  
12 had that meeting on January 6, and I hadn't even spoken  
13 to Nodak or Otter Tail, or my engineers hadn't spoken to  
14 anybody yet, because we didn't know who to speak to at  
15 that time.

16 The mayor and I had had a conversation between  
17 the two of us, and I believe it was on a phone call -- I  
18 know it was on a phone call because I wasn't there  
19 personally -- and we discussed the potential for  
20 annexing. And in that January 6 meeting, which was an  
21 official City of Drayton meeting, it was brought up, and  
22 I committed to the city council and to the mayor at that  
23 time that we would annex. So there's no way that Otter  
24 Tail or Nodak was involved because we didn't know who to  
25 talk to.

1 Q. Now, I want to ask specifically about the  
2 facility Love's intends to construct. And I know you're  
3 not an engineer, but are you generally familiar with the  
4 electrical needs Love's requires for that site?

5 A. Yes, Sir. Just enough to be dangerous.

6 Q. Okay. What electric service does Love's need  
7 for their proposed truck stop near Drayton?

8 A. I know we need three-phase electrical.

9 And through some of the testimony that I've  
10 listened to today, I did reach out to our supervisor of  
11 construction and asked if we ever did the -- use  
12 single-phase electric and then have phase converter, and  
13 he said in no circumstance would we ever do that because  
14 of the extra cost it would add to our utility bill and  
15 then the potential for issues of having downtime.

16 Q. And what --

17 A. That's about the extent of my knowledge.

18 Q. Okay. Well, and what you, I believe, were just  
19 referencing was the potential to run an extension off  
20 the single-phase line on the south side of McFarland's  
21 Addition -- or excuse me -- Nodak's single-phase line on  
22 the south side. Was that something that Love's  
23 considered at one point?

24 A. No, never. And I -- it was a learning question  
25 for myself when I heard that today. And again, I'm not

1 saying Nodak said that was an option. I'm not saying  
2 Otter Tail said that was an option. I just heard  
3 discussion about it today and it was just a learning  
4 question. I wanted to know if we ever did it, because I  
5 had never heard of that before.

6 Q. Okay. Now, you mentioned earlier that when you  
7 made the decision to annex the property, you hadn't  
8 spoken to either -- either to Nodak or Otter Tail. At  
9 some point after that January meeting, did  
10 representatives of Love's reach out to the electric  
11 utility providers in the area to discuss service for  
12 that project?

13 A. Yes. And that's what the role my engineers  
14 take. And the purpose of that meeting is to find out  
15 who provides electric, you know, who provides phone  
16 service, just all that good stuff. And maybe a city has  
17 a relationship with a traffic engineer for the DOT of a  
18 state.

19 So we got the information. And yes, one of my  
20 engineers reached out. That meeting was at the end of  
21 January so I'm guessing it would probably be in February  
22 they reached out to them.

23 Q. And can you just explain what Love's did to  
24 investigate electric suppliers?

25 A. You mean after we found out who we could use --

1 Q. Yes.

2 A. -- or what we did to make that choice?

3 Yeah, we have -- we have a bunch of internal  
4 departments. We have utility providers -- I mean, we  
5 have a utility department and, you know, they look and  
6 try to see what rates are between the two providers,  
7 or three providers, whatever the case, two in this case.  
8 So they're doing that.

9 Simultaneously, my engineers are working with  
10 the engineers of, like, Nodak and Otter Tail, in this  
11 case, to find out if they can provide -- service our  
12 load, if they -- what it's going to take to get there,  
13 you know, all that good stuff.

14 So my role is more of a -- kind of a delegator  
15 and making sure that stuff is being done once I delegate  
16 it. And the engineers dig down into the minute points,  
17 and the utility department, you know, they dig into it  
18 from an accounting side, and then they get me the  
19 information.

20 Q. Okay. And with respect to this project, your  
21 understanding is Love's would have been the one who  
22 reached out to Otter Tail to discuss electric service at  
23 this site?

24 A. Yes. Yeah. Definitely.

25 Q. Did Love's also contact Nodak Electric regarding

1 electric service?

2 A. Yes.

3 Q. And can you just explain to the Commission,  
4 based upon your -- based on the company's, Love's,  
5 contact with both of those, did Love's have a preference  
6 as to which company would provide electric service?

7 A. At the beginning, we don't have a preference  
8 because I don't go into -- you know, into the  
9 investigation with any preconceived ideas. You know, I  
10 make assumptions that whatever service providers are  
11 there, they're both good or they wouldn't probably be in  
12 business. Having said that, once we got into the  
13 investigation further, then my preferences changed to  
14 Otter Tail for multiple reasons.

15 Q. And can you just explain to the Commission what  
16 those multiple reasons were?

17 A. Yeah, definitely. The meeting that the Nodak  
18 CEO discussed earlier, the phone call meeting that  
19 myself and Mayor Olson was on, it was a meeting that was  
20 held after I had requested Otter Tail to speak with  
21 Nodak. And the reason I requested Otter Tail speak with  
22 Nodak was because I didn't want to be in the middle of  
23 this crap.

24 And, you know, it seemed like it was a -- kind  
25 of a tug-of-war between who was going to give us our

1 service, and I just wanted service so I could get a  
2 store open. So I asked -- I asked the Otter Tail rep  
3 if, since he had a relationship with Nodak, if he  
4 wouldn't mind holding that first meeting to see if they  
5 could get Nodak to step away and let us have our  
6 service.

7 And once that didn't go well, it was decided  
8 that the mayor and I would have a meeting in hopes that  
9 Nodak would hear it straight from me that we wanted  
10 Otter Tail to provide our service.

11 And, you know, quite frankly, that meeting did  
12 not go well at all, and it didn't go well in regards to  
13 the fact I didn't get what I wanted. It didn't go well  
14 because of the -- the way that I felt bullied.

15 Our legal team had already had documents, had  
16 already used a -- I believe they used a local counsel in  
17 South Dakota as well to dive into this issue because I  
18 wanted to know, is Otter Tail telling me the truth? Is  
19 Nodak telling me the truth? What's the real deal here?  
20 And their take on it was that we had our choice of who  
21 we could use based on the legal stuff they reviewed.

22 So when I explained that to the -- to Mylo --  
23 I'm sorry, I can't remember Mylo's last name -- I  
24 explained that to Mylo, the meeting turned pretty  
25 contentious and, you know, I told him that I wasn't

1 going to be bullied into using them. And, you know, he  
2 -- he didn't respond well, in my opinion, so my thought  
3 there immediately is if the CEO of a company, you know,  
4 treats potential customers this way or somebody that  
5 they want to be a customer, even though I already said I  
6 didn't want to be their customer, he was still trying to  
7 lure our business and I didn't want any part of him.

8 He had testified earlier that we requested rates  
9 from them after that meeting, at the end of the phone  
10 call. He's 100 percent correct that -- that it was  
11 requested, but the only reason that I requested those  
12 rates is because he told me that the rates that were  
13 posted would not be the rates that we would pay, so my  
14 response was, well, send me your rates then. So that's  
15 how that went down.

16 I was not interested in using them. We had  
17 already done research. Obviously, I wasn't interested  
18 in using them at the beginning of the phone call because  
19 that's the whole reason of the phone call. So there --  
20 it was a customer service issue from that standpoint,  
21 you know, that's kind of where it came from, and then,  
22 obviously, the cost savings to us over the long haul.

23 You know, I've heard testimony today about  
24 Nodak's not going to charge us anything upfront and it's  
25 going to be a \$19,000 investment. Well, okay, \$19,000

1 is a lot of money, but we're investing 12 to \$15 million  
2 to build a location in Drayton, North Dakota, and we're  
3 going to be there for 20, 25 years, and we have to pay  
4 rates over 25 years. And the rates that Nodak charges  
5 versus the rates that Otter Tail charges, it would be  
6 cheaper for me to go with Otter Tail and have to pay  
7 that \$19,000 or not pay the \$19,000 upfront.

8 So it was just a litany of things that came  
9 about, and that's why we chose Otter Tail.

10 Q. Okay. And, Mr. Walters, at any point did Love's  
11 indicate or would it be acceptable for Love's to accept  
12 interruptible service for that location?

13 A. No, never. Even to the extent -- you know, I  
14 mean, we've all seen the reports a couple months ago,  
15 the bad weather and the electrical grid shutting down.  
16 And during COVID, the trucking industry was deemed an  
17 essential business by the Government, which Love's was  
18 looped into that, and our competitors as well, not just  
19 Love's, but the other truck stops were as well, because  
20 we have to be open 24/7/365.

21 So the thought of this reduced rate by -- I  
22 can't remember exactly how they worded it, but no,  
23 that's no interest because we have to be open and  
24 running 24/7/365.

25 Q. And during those conversations with Nodak, did

1 you make it clear to them that Love's preferred to  
2 receive service from Otter Tail?

3 A. Yes, very clear.

4 Q. And, Mr. Walters, what is the current status of  
5 the Drayton Love's project?

6 A. We did some underground work last year. That  
7 property is very wet and so we had to do some  
8 underground work as far as our drainage and that kind of  
9 stuff. And then the property had to -- had some  
10 compaction issues so we had to do some special  
11 compaction and let it set for a while. So we let it  
12 set. And knowing this issue was still ongoing, it  
13 didn't hurt us to let it set over the winter because we  
14 wouldn't have built during the winter anyway, but also,  
15 we had to kind of slow things down because not knowing  
16 where our electrical service was coming from.

17 Q. And what is your estimated completion time for  
18 the Love's project near Drayton?

19 A. Well, barring, you know, the outcome of the  
20 hearing and knowing who our provider is going to be and  
21 however long that takes, we would like to get started  
22 breaking ground again here at the beginning -- end of  
23 April, beginning of May time frame, and hopefully, it  
24 will be open by October, you know, weather permitting.

25 Q. Mr. Walters, I have no further questions at this

1 time. Thank you.

2 A. Thanks.

3 ALJ DAWSON: Ms. Radermacher.

4 MS. RADERMACHER: Thank you.

5 CROSS EXAMINATION

6 BY MS. RADERMACHER:

7 Q. Hello, Mr. Walters.

8 A. Hello. How are you today, Ma'am?

9 Q. Good. And yourself?

10 A. Doing well. Thank you.

11 Q. Is it warm down there?

12 A. It's about in the 50s today so it's not too bad.

13 Q. Okay. I'm just going to ask you a couple of  
14 brief questions.

15 Now, you indicated that, typically, it's  
16 preferable that you are inside city limits to be able to  
17 receive some city utilities, but do you have Love sites  
18 that are not located in city limits?

19 A. Yes.

20 Q. And would you say there's -- do you have sites  
21 in North Dakota that are not inside city limits?

22 A. Let's see. Williston is in the city limits.  
23 Valley City is in the city limits. Fargo is in the city  
24 limits. I would say no to that, to the best of my  
25 knowledge.

1 Q. Okay. But you do have sites throughout the  
2 United States that are not directly in city limits?

3 A. Yes.

4 Q. Okay. Now, you indicated that there were  
5 conversations that took place with Nodak, but did you  
6 ever have conversations where Nodak was -- where it was  
7 just you and Nodak Electric?

8 A. No. It was either myself and the mayor that was  
9 usually on the phone with Nodak.

10 Q. Okay. And why was the mayor involved in some of  
11 those conversations?

12 A. Well, quite honestly, the thought process was,  
13 was that we hoped that once Nodak heard from the mayor  
14 that they supported this decision and that Love's wanted  
15 this decision, that Nodak would accept that decision.  
16 But obviously it didn't turn out that way because we're  
17 here today.

18 Q. Okay. But do you understand at least or  
19 appreciate Nodak's position in that they have facilities  
20 that are located on the property you purchased and so  
21 they're just trying to protect their territory?

22 A. I understand it from that regards, but, you  
23 know, I've heard testimony today from Nodak that they  
24 need to protect their investment. Like I said, the way  
25 Love's likes to do business is we believe the city needs

1 to protect their investment, and at that point their  
2 investment was the money they put into their public  
3 utilities, which is why Drayton got chosen over some of  
4 the other cities between Grand Forks and Canada.

5 Q. Okay.

6 A. And then just like both of those entities need  
7 to protect their investment, Love's is a business.  
8 Yeah, we're big and we've been in business for 57 years,  
9 but we still have a return on investment we need to  
10 make, and it's a significant cost difference for rates  
11 between the two.

12 Q. Okay. And when you say --

13 A. So when --

14 Q. And I apologize, because I asked a specific  
15 question and you're kind of going off topic.

16 So when you say that there's a rate difference,  
17 did Otter Tail Power ever give you a hypothetical cost  
18 of what their service would be?

19 A. A hypothetical cost based on our usage or like a  
20 rate --

21 Q. Yes. Well, just based on a rate or even based  
22 on what your annual usage would be.

23 A. They may have given me that. I know they gave  
24 me what our rate would be, and the same as -- as Nodak.  
25 Nodak gave me what their rates would be. And I gave

1 those to our utility and accounting department and let  
2 them look at it.

3 Q. Okay. And so was there ever a -- did Otter Tail  
4 ever give you a hypothetical what they thought Nodak  
5 Electric rates might be?

6 A. I think what they gave me may have been what was  
7 posted, because their estimate was just a little bit  
8 higher of what -- what our estimate came out to be.

9 And again, just like Nodak, Otter Tail doesn't  
10 know what our other stores use in utilities. They can  
11 have their best guess. But what my utility department  
12 and accounting department did was they took stores of  
13 the same size and usage and -- I mean, they took stores  
14 of the same size, took that usage, applied the rates,  
15 and came out with a number.

16 Q. Okay. But do you realize that to some extent,  
17 you know, cooperatives have a little bit of leeway with  
18 some of their rates? Maybe there's a power factor  
19 charge, for example, that the board would agree to  
20 waive? Did you at any point sit down with Nodak and see  
21 what they're willing to do on their rates?

22 A. As I testified earlier, the phone call I had  
23 with the CEO of Nodak, he made it very clear that the  
24 rates that I saw would not be the rates that I charged,  
25 and I told him to send me what rates he would charge me

1 and he did that. So -- so I would say he had his  
2 opportunity to give me his best price and the chips fell  
3 where they fell.

4 Q. Okay. And so according to the mayor of Drayton,  
5 he said, well, it was in excess of \$30,000 difference.  
6 Based on the rates I've seen between what Otter Tail  
7 proposes and what Nodak Electric proposes, how do you  
8 come up with that math?

9 A. Again, it was -- like I said earlier, the rates  
10 that were given to us by Nodak and the rates that were  
11 given to us by Otter Tail, and our accounting and  
12 utility department looked at actual bills of -- or  
13 actual usage of stores of the same size and structure as  
14 the store we're building in Drayton and that's how they  
15 came up with the math. I mean, I'm not -- I didn't do  
16 the analysis myself, but I mean that's common sense of  
17 how they would do that.

18 Q. Okay. But just to -- but between you and I, I  
19 mean, like you never actually sat down with Nodak  
20 Electric and either one of you lay the chips on the  
21 table in a face-to-face conversation without somebody  
22 else present. Would you agree?

23 A. No, I don't agree that -- that they -- that that  
24 happened that way, because I believe the email was sent  
25 directly to me from Mylo, and I don't think he copied

1 anybody else on what my rates would be.

2 Q. No. So what I'm getting at, though, is did --  
3 at any point, did you sit down at the table or in a  
4 conference -- face-to-face conference with Mylo or  
5 anybody else from Nodak Electric to sit and discuss, you  
6 know, this matter without the mayor present or an Otter  
7 Tail representative present?

8 A. No, we didn't do that.

9 Q. Okay. Did Otter Tail ever indicate to you how  
10 they intend to extend service to the Love's site?

11 A. They probably did to me personally, but again,  
12 I'm not an engineer. I know that my engineers have been  
13 working with their engineers so there has been some  
14 discussions. I can't tell you specifically what that  
15 is, though.

16 Q. Okay. So you don't know whether or not there  
17 was any route, specific route, that was picked in order  
18 to provide service to the site?

19 A. I don't -- I know there has been a route picked.  
20 I'm not sure exactly how it's going to get there from  
21 point A to point B. I know that it has to be bored  
22 under I-29, and I believe they're using the same boring  
23 that we have to use to get the utilities to that side of  
24 the interstate as well.

25 Q. Okay.

1           A. Now, I could be wrong, but I'm pretty positive  
2 they're using the same boring.

3           Q. Okay. And so did they ever provide what your  
4 cost of extension would be or what their cost of  
5 extension would be to that site?

6           A. Yeah, I'm sure they looked at that, you know --

7           Q. But have they -- yeah. Have they ever provided  
8 you a dollar amount?

9           A. I don't know the answer to that one. I mean,  
10 this has been going on for what, three years now, so I  
11 don't know the answer to that one.

12          Q. Okay. And you indicated that there's kind of a  
13 difference between rates, but do you realize that rates  
14 are subject to change either -- you know, on a regular  
15 basis, either by the cooperative or by the IOU?

16          A. Oh, I mean, definitely. Like I said, we have  
17 550 stores so been in business 57 years. We understand  
18 a lot of that. But I also understand that I asked Mylo  
19 to send me what my rates were and he sent them, and like  
20 I said, the chips fell where they fell.

21          MS. RADERMACHER: Okay. I have no further  
22 questions.

23          ALJ DAWSON: Mr. Johnson.

24          MR. JOHNSON: No questions.

25          ALJ DAWSON: Commissioner Kroshus.

1           COMMISSIONER KROSHUS: Good afternoon,  
2 Mr. Walters. Just one question.

3           Did you reach out -- and you may have said this  
4 so I apologize. Did you reach out to Otter Tail Power  
5 or did they reach out to you in terms of a service  
6 agreement, a potential service agreement?

7           THE WITNESS: It would have probably been my  
8 engineers, would have probably discovered that Otter  
9 Tail had electricity in that area. So when you say, did  
10 you reach out, Steve Walters probably didn't do that,  
11 but somebody on behalf of Love's did. Yes.

12          COMMISSIONER KROSHUS: Okay. All right. Thank  
13 you. No other questions.

14          ALJ DAWSON: Commissioner Fedorchak.

15          COMMISSIONER FEDORCHAK: Thank you, Mr. Walters.  
16 I don't have any questions for you. Thanks.

17          ALJ DAWSON: Commissioner Christmann.

18          COMMISSIONER CHRISTMANN: I think when one of  
19 the attorneys, and I don't remember which it was, was  
20 maybe probably seeking a comparison, you had indicated  
21 you thought that the Love's Truck Stop at Williston was  
22 in city limits. Do you know, though, if that's serviced  
23 by the cooperative up there or by the investor-owned  
24 utility?

25          THE WITNESS: I don't know the answer to that.

1 I'm sorry.

2 COMMISSIONER CHRISTMANN: But as an  
3 organization, have you ever, like, kind of analyzed, is  
4 there a significant distinction that you find between  
5 your costs of electricity in cooperative-serviced truck  
6 stops as opposed to the investor-owned utility truck  
7 stops?

8 THE WITNESS: I'm sure somebody internally has.  
9 We're always looking at cost-savings measures. I  
10 personally haven't. I haven't heard of anything.

11 You know, our stance through this whole process,  
12 because I've kept my VP and I've also kept my -- my VP  
13 in the loop on everything. Mr. Love knows a little bit  
14 about it. But the stance from our VP is, is for me to  
15 use the -- have the investigation done. Like I said,  
16 I'm a delegator. So it was either accounting, utility  
17 department, or my engineers were doing something for me  
18 and looking at stuff. And his direction to me was find  
19 the provider that's going to give us the best service  
20 and -- and the least expensive rates. And if I felt  
21 comfortable with it, then that's who we go with.

22 COMMISSIONER CHRISTMANN: Perfect segue. You  
23 must have imagined my next question.

24 So when you say best service, did you reach your  
25 conclusion solely on your analysis of price, or were

1       there reliability issues?

2               THE WITNESS:  It's hard for me to say that there  
3       were reliability issues for either partner, whether it  
4       be Nodak or whether it be Otter Tail, simply because I  
5       don't -- I've never used them so I can't speak to that  
6       personally.

7               Like I said, after the conversation with the  
8       CEO, I was pretty turned off by Nodak at that point, but  
9       when I gave the information to our utility and  
10      accounting department, they had no -- they had no  
11      concept of that conversation.  I just sent them the  
12      information and told them -- asked them to get me the  
13      rates and who would be the best rate provider.

14              COMMISSIONER CHRISTMANN:  Okay.  So there's no  
15      underlying reliability study or anything like that at  
16      play here, it's --

17              THE WITNESS:  (Indiscernible)

18              COMMISSIONER CHRISTMANN:  -- your discussions  
19      and price?

20              Okay.  And will this truck stop have a EV  
21      charging station, or multiples?

22              THE WITNESS:  No, it will not.  I know that was  
23      alluded to earlier by Nodak, and that conversation was  
24      100 percent accurate.  At the beginning there was a  
25      little bit of discussion about that internally with

1 Mr. Love, and then -- I can't remember exactly what  
2 happened, but something had taken place with some  
3 government regulation or something and it kind of  
4 changed our stance on us doing the EV stuff.

5 COMMISSIONER CHRISTMANN: Leave it to the  
6 government, huh?

7 (Laughter)

8 COMMISSIONER CHRISTMANN: Do you put them in at  
9 some of your stations or --

10 THE WITNESS: (Indiscernible)

11 COMMISSIONER CHRISTMANN: -- is that something  
12 you haven't done yet?

13 THE WITNESS: I'm sorry, my phone -- my thing  
14 was cut out. I think I interrupted you. I'm sorry, go  
15 ahead.

16 COMMISSIONER CHRISTMANN: Or is that area you  
17 haven't ventured into yet?

18 THE WITNESS: No. We have some in California  
19 and Las Vegas, I know there's some that have EV  
20 stations.

21 That's a pretty significant investment. You  
22 know, each one of those stations is about \$250,000. So  
23 when you look at putting in four of those, I mean,  
24 you're looking at another hundred thousand dollars  
25 you're adding to the bottom line, and right now there's

1 just not a lot of EV cars on the road to make up for  
2 that.

3 COMMISSIONER CHRISTMANN: Does that make a  
4 difference in what electric service you would set up or  
5 what you're doing here would be sufficient, other than  
6 the bottom line?

7 THE WITNESS: I'm -- yeah, I'm not -- from an  
8 engineering perspective, I can't answer that for sure.  
9 I mean, I'm sure it would obviously have an increase on  
10 the load and the needs, but I -- I don't know the answer  
11 to that.

12 COMMISSIONER CHRISTMANN: Okay. I have no other  
13 questions, but I will just say my brother in North  
14 Platte will be pleased that you identify Nebraska as a  
15 northern state.

16 (Laughter)

17 THE WITNESS: Well, I'm from the South so it's  
18 anything north of me is a northern state.

19 ALJ DAWSON: Mr. Sanderson.

20 MR. SANDERSON: No. I have no further  
21 questions.

22 ALJ DAWSON: Any further questions?

23 MS. RADERMACHER: My mic is also dead, but I  
24 have no further questions.

25 ALJ DAWSON: Okay. I see no further questions

1 so you may step down.

2 Mr. Sanderson.

3 MR. SANDERSON: Thank you, Mr. Walters.

4 Judge, at this time Otter Tail would call Tyler  
5 Jacobson.

6 ALJ DAWSON: Mr. Jacobson.

7 Mr. Jacobson, you were here for my previous  
8 warnings as to perjury?

9 MR. JACOBSON: Yes.

10 ALJ DAWSON: So you understand what perjury is  
11 and the penalties for it?

12 MR. JACOBSON: Yes.

13 ALJ DAWSON: Understanding so, do you promise or  
14 swear that the testimony that you're about to give will  
15 be the truth, the whole truth, and nothing but the  
16 truth?

17 MR. JACOBSON: Yes.

18 ALJ DAWSON: Mr. Sanderson.

19 MR. SANDERSON: Thank you, Your Honor.

20 **TYLER JACOBSON,**

21 being first duly sworn, was examined and testified as  
22 follows:

23 DIRECT EXAMINATION

24 BY MR. SANDERSON:

25 Q. Mr. Jacobson, could you please state your full

1 name and business address for the record?

2 A. Tyler Jacobson.

3 Q. And whom are you employed by?

4 A. Otter Tail Power Company.

5 Q. And what is your position with Otter Tail?

6 A. Senior area engineer.

7 Q. And could you briefly describe the job  
8 responsibilities for senior area engineer?

9 A. Yeah. I manage transmission and distribution  
10 projects across my service territory.

11 Q. And what is your service territory?

12 A. Northwestern Minnesota and northeastern North  
13 Dakota.

14 Q. And is the city of Drayton within your  
15 geographical service territory?

16 A. Yes.

17 Q. Okay. Could you briefly provide the Commission  
18 with your educational background?

19 A. I went to the University of North Dakota for  
20 mechanical engineering.

21 Q. And after graduating from the University of  
22 North Dakota, what's been your work experience?

23 A. Right out of school I worked for a food  
24 processing company and we designed food processing  
25 conveyors. After that, I was a hydraulic fracturing

1 engineer for a number of years. After that, I got on  
2 with Otter Tail and designed substations for several  
3 years.

4 Q. And how long have you been working for Otter  
5 Tail?

6 A. Since 2016.

7 Q. Okay. And as part -- you indicated as part of  
8 your role and responsibility as senior area engineer,  
9 you design line extensions for Otter Tail?

10 A. Yes.

11 Q. Now, are you familiar with the proposed Love's  
12 Truck Stop facility near Drayton?

13 A. I am.

14 Q. And can you explain your involvement with this  
15 project?

16 A. Our operations manager was part of the initial  
17 correspondence for the project, that he explained it to  
18 me and we (indiscernible) the project together, and both  
19 of us decided that this is -- would be the best way to  
20 serve it. Since then, you know, we've -- of course,  
21 it's been on a standstill.

22 Q. Now, before we begin discussing the specific  
23 project, what's been marked and admitted as an exhibit  
24 in this case is Otter Tail Exhibit 4, and it's a map of  
25 the Drayton area and the McFarland's Addition. Did you

1 prepare this document?

2 A. Yes.

3 Q. Okay. And you're familiar with the contents of  
4 what's contained on Exhibit 4?

5 A. I am.

6 Q. Okay. Do you have a copy of Exhibit 4 in front  
7 of you?

8 A. No, if you don't mind.

9 Q. Yeah, I apologize.

10 UNIDENTIFIED SPEAKER: I was not provided one.

11 MR. SANDERSON: Okay. Do you have access to the  
12 -- we filed it with the Commission. Would you have  
13 access off that?

14 No? Not a problem.

15 May I approach, Your Honor?

16 ALJ DAWSON: Yes.

17 MR. SANDERSON: Thank you.

18 BY MR. SANDERSON:

19 Q. Mr. Jacobson, I've handed you what's been marked  
20 as Otter Tail Exhibit 4. Can you just kind of walk the  
21 Commission through what's contained on that exhibit?

22 A. Yeah. So on the right side of the interstate  
23 shows some transmission line and distribution line owned  
24 by Otter Tail as well as in the yellow box -- I guess no  
25 one else can --

1           THE WITNESS: Can you guys see? Or do you guys  
2 have copies of it?

3           A. In the yellow box is where Nodak's underbuild  
4 is, single-phase underbuild is on our transmission line.  
5 The red line that runs east and west is Nodak's  
6 single-phase underground line. And then the green box  
7 encompasses our proposed extension to serve the new  
8 transformer.

9           Q. Okay. And can you explain to the Commission how  
10 Otter Tail proposes serving the proposed Love's facility  
11 in McFarland Addition?

12          A. Yeah. Basically, if you look at our -- at the  
13 green box I have drawn out, on the far right side of it  
14 there's an existing riser pole. Right there we would  
15 install a junction box, and then bore underneath the  
16 interstate all the way to the transformer location and  
17 install a transformer.

18          Q. Now, currently, does Otter Tail serve any  
19 customers in McFarland's Addition?

20          A. We do not.

21          Q. Okay. What type of service did Love's request  
22 for the McFarland's Addition facility?

23          A. Three-phase service 120/208.

24          Q. Now, you've heard some testimony -- you've been  
25 in the room today; correct?

1           A.    Correct.

2           Q.    You heard some testimony from a Nodak witness  
3 regarding permitting for boring under I-29?

4           A.    Yes.

5           Q.    Do you recall that testimony?

6           A.    I do.

7           Q.    Can you explain to the Commission, has Otter  
8 Tail obtained permits for boring under I-29?

9           A.    Yeah.  Typically, we will reach out internally  
10 to get that process moving forward for permitting, in  
11 this case, before we'd even order material.  So yes.

12          Q.    And when did Otter Tail obtain those permits?

13          A.    It looks like May 2020.

14          Q.    Okay.  And are those -- were those permits  
15 extended into the present year, 2021?

16          A.    Yes, (inaudible) an extension.

17          Q.    Now, you also heard some testimony about boring  
18 and, you know, what it is.  Just describe from your  
19 experience, in designing facilities, the use of boring.

20          A.    Yeah.  So in my experience, boring is a very  
21 common practice.  It's more common to bore than it is to  
22 plow in a facility like this even if there's one  
23 roadway.  Typically, by the time you set up all the  
24 equipment to bore, even if it was a 40-foot roadway, it  
25 would be easier just to continue boring several hundred

1 more feet and finish the job versus trying to save --  
2 re-set up and save a couple dollars per foot and plow.  
3 So this is a very straightforward, common practice that  
4 we see all the time.

5 Q. And do you typically, in your projects, do more  
6 boring than you do trenching?

7 A. We do.

8 Q. Okay. Are there any NESC regulations that  
9 prohibit boring under I-29?

10 A. There are not.

11 Q. And is boring under a roadway something that  
12 Otter Tail does in North Dakota?

13 A. It's common, yes.

14 Q. Using -- well, in reference to the map, you  
15 heard the repeated testimony from Nodak today about the  
16 dangers of our boring impacting their underground line.  
17 Can you just respond to those concerns?

18 A. My priority, when designing any system or any  
19 job I do, is always safety. That's always my first  
20 priority.

21 There isn't any internal Otter Tail standard or  
22 NESC guideline or regulation that prohibits a design  
23 like this. They have guidelines that suggest you should  
24 keep lines like this perpendicular to roadways, which  
25 we're doing, as well as sufficiently -- sufficient

1 radial distance from other utilities or from other  
2 underground lines. And all that criteria is being  
3 followed.

4 Q. And just roughly, how far is your proposed line  
5 extension from Nodak's underground single-phase line in  
6 McFarland's Addition?

7 A. I don't have the exact, precise location of  
8 their underground on our mapping system, but it is  
9 located at the location, but my estimate would be about  
10 50 feet.

11 Q. Okay. Now, when -- you indicated from the  
12 junction box on the east side of I-29, am I correct,  
13 your testimony was it's going to be underground service  
14 all the way to the McFarland's Addition?

15 A. Correct.

16 Q. Now, does -- you've heard the testimony, there  
17 is a Nodak overhead line in that area. Am I correct in  
18 understanding that?

19 A. Yes. There's a single-phase underbuilt. Yep.

20 Q. And when you say "underbuilt," that's underbuilt  
21 under Otter Tail's existing overhead line?

22 A. It's on our transmission poles, correct.

23 Q. Okay. Are there any NESC regulations that would  
24 prohibit Otter Tail from running underground service  
25 under Nodak's overhead lines in the location east of

1 I-29?

2 A. There isn't.

3 Q. And are you aware, does Nodak currently serve  
4 any customers in McFarland's Addition?

5 A. Not that I'm aware of.

6 Q. You've heard the testimony here today, and just  
7 want to be clear, that the underbuild that you  
8 referenced, who owns those power poles?

9 A. Otter Tail does.

10 Q. And so Otter Tail's proposed extension from the  
11 east of I-29 is to go under the existing overhead lines  
12 of Nodak; correct?

13 A. Correct.

14 Q. Is that the only place where Otter Tail's line  
15 -- or proposed extension to McFarland's Addition would  
16 cross an existing Nodak line?

17 A. If you look at the north side of the exhibit,  
18 you can see actually where our underground appears to  
19 cross their underbuild. So there's an example right  
20 there.

21 Q. And I guess my -- and it was probably a poor  
22 question.

23 Our proposed extension only crosses their line  
24 in one location; correct?

25 A. Correct.

1 Q. Okay. Now, you've sat and heard the testimony  
2 of Nodak as to their proposed extension off the existing  
3 three-phase service to the west of McFarland's Addition;  
4 correct?

5 A. Yes.

6 Q. And along the western boundary of McFarland's  
7 Addition, does Otter Tail have a facility or system in  
8 that location?

9 A. Yes. We have our transmission line.

10 Q. And based on the testimony you've heard and the  
11 exhibit you saw regarding Nodak's extension, would  
12 Nodak's three-phase extension from those grain bins to  
13 the west cross Otter Tail's existing transmission line?

14 A. I would say so, yes.

15 Q. And based upon the location of Nodak's existing  
16 facilities and the fact it serves no customers in  
17 McFarland's Addition currently, would Otter Tail's  
18 extension of electric service to Love's constitute an  
19 unreasonable duplication of electric services provided  
20 by Nodak?

21 A. I don't believe so.

22 Q. And based upon Otter Tail's proposed extension  
23 from the east side going underneath, in one location,  
24 Nodak's overhead lines, are you aware of any  
25 interference with Nodak's current systems as a result of

1 that extension?

2 A. It doesn't violate any NESC guidelines or Otter  
3 Tail standards.

4 Q. And will your extension cause any interruption  
5 to any services provided by Nodak to its customers?

6 A. Not -- nothing comes to mind.

7 Q. What is the current status of the Love's project  
8 and electric service?

9 A. We have the material on hand ready to install,  
10 but of course we haven't installed anything yet.

11 Q. What is the projected timeline for construction  
12 of this Love's project?

13 A. I think four to six weeks would be a  
14 conservative estimate.

15 Q. Mr. Jacobson, I have no further questions at  
16 this time. Thank you.

17 ALJ DAWSON: Ms. Radermacher.

18 MS. RADERMACHER: Yes. May I have Exhibit Nodak  
19 2 brought up, please?

20 CROSS EXAMINATION

21 BY MS. RADERMACHER:

22 Q. Mr. Jacobson, how are you today?

23 A. Good.

24 ALJ DAWSON: Mic on, please.

25 MS. RADERMACHER: Oh, excuse me. Sorry.

1 Q. Okay. I have in front of me your OTP No. 4.  
2 And according to this, it says it was drawn by you; is  
3 that correct?

4 A. Yes.

5 MS. RADERMACHER: Okay. Now, can I have Nodak 2  
6 brought up, please?

7 Q. So when you're doing this -- kind of laying this  
8 out, are these lines where they're supposed to be or is  
9 this just a best guesstimate of where you think the  
10 lines are?

11 A. I visited the location earlier this week and  
12 looked at several landmarks on location. From what I  
13 could see, is Nodak's line was previously located for  
14 the construction of the Love's site, and you can see  
15 individual flags going across the site --

16 Q. Okay.

17 A. -- showing where their single-phase line is, and  
18 that's what I used to draw this red line in, using that  
19 corresponding to poles and grain bins and other  
20 landmarks.

21 Q. Okay. And so would you agree that Nodak would  
22 be best -- know where their facilities would be versus  
23 anybody else?

24 A. I would say so.

25 Q. Okay. And so if their engineering drafted where

1 their services are on this map, would you agree that's  
2 probably pretty accurate?

3 A. There's always discrepancies between mapping and  
4 real life locates.

5 Q. Okay. But would you agree that your map omits  
6 part where that -- it actually jogs up and comes across  
7 and comes back down, that you draw a straight line at  
8 one point that goes completely across interstate and  
9 over?

10 A. Yeah. I was not aware of that jog in the line.  
11 I only looked at the poles that were placed at location.

12 Q. Okay. But again, would you agree that, based on  
13 your site drawing, that it doesn't appear that you --  
14 that you and Nodak disagree as to where Nodak's  
15 facilities are located?

16 A. You could say that.

17 Q. Okay. And depending upon where Nodak's property  
18 technically is, based on where you -- how you proposed  
19 to build, it could affect how many times you cross over  
20 that line. Would that be safe to say?

21 A. Say that again, please.

22 Q. So at this point, you were asked how many times  
23 would you cross over the line. You indicate just once.  
24 However, here it appears that this line, where the  
25 facilities are actually located, it does not appear you

1 are not completely sure of?

2 A. We would never design an underground system to  
3 cross another underground system. We would adjust it  
4 accordingly based on where their line was located.

5 Q. Okay. And so as you say, this is a proposed  
6 extension, this is not the actual -- I mean, you guys  
7 have not extended service at this point?

8 A. No.

9 Q. So you could -- your route could be subject to  
10 change based on site conditions. Would that be safe to  
11 say?

12 A. It's safe to say for any project of this type.

13 Q. Okay. And have you -- and one thing, back to  
14 the OTP No. 4. Was this intended to be kind of all  
15 inclusive of what services are located out there?

16 A. I put this together in preparation for this --  
17 for today with what I thought was relevant.

18 Q. Okay. So it might be that Nodak has other  
19 electric lines that are -- that are surrounding this  
20 area but you may not have included them?

21 A. On the west side of my exhibit, I have a box  
22 showing where their three-phase transformer is.

23 Q. Okay.

24 A. I was unaware of where their underground  
25 facilities were there, were over there, so that's why I

1 just have the box there. I didn't know where their  
2 three-phase primary was located at.

3 Q. Okay. So you did not include that as part of  
4 the exhibit?

5 A. I did not.

6 Q. Okay. Now, you indicated that -- you were  
7 talking kind of boring versus trenching. Typically, if  
8 you were to go across interstate, particularly on the  
9 off ramps, the on ramps on the south- and northbound  
10 lanes, boring would probably be the only way that you  
11 could cross interstate. Would that be accurate?

12 A. I suppose overhead would be an option, but it  
13 would be a very undesirable option.

14 Q. Okay. But you were talking about boring versus  
15 trenching, saving a couple of dollars, and talking about  
16 how boring -- basically touting boring as the only way  
17 to go. But boring would probably be the only way if  
18 you're going to do underground, would that be correct,  
19 in this particular spot?

20 A. What I was saying is that by the time you set up  
21 that equipment, usually the field personnel will just  
22 keep that equipment set up and bore the rest of the job.

23 Q. Okay.

24 A. That's more efficient than re-setting up and  
25 then plowing the cable in.

1 Q. Okay.

2 A. Often how it's done.

3 Q. So I apologize. I may have misunderstood that  
4 you were talking about boring versus trenching, but once  
5 you're boring, you're already going to continue to bore  
6 is what you are referencing?

7 A. Uh-huh.

8 Q. Okay. Now, you have drafted a map based on what  
9 your proposed extension was. Have you sat down and  
10 crunched the numbers on what the costs of the proposed  
11 extension would be?

12 A. Yeah. My cost estimate changed this week when  
13 we had an updated transformer location from the Love's  
14 site as well as an updated transformer size. So it  
15 increased a little bit just this week. But the cost  
16 estimate is about \$52,000.

17 Q. Okay. And when did you actually put that cost  
18 estimate together?

19 A. I put this cost estimate together this week.  
20 The initial cost estimate was put together by Doug  
21 Steinmetz, the operations manager.

22 Q. And when would that have been?

23 A. Early twenty-nine -- 2020. I don't recall.

24 Q. Okay. Are you aware that Nodak Electric,  
25 through interrogatories, had requested what the cost

1 estimate would be and none was provided because  
2 engineering specs had yet to be completed? Are you  
3 aware of that?

4 A. No one contacted me.

5 Q. Okay. So who filled out the interrogatories on  
6 behalf of Otter Tail? Are you aware?

7 A. Filled out the --

8 Q. Interrogatories that were submitted by Nodak,  
9 who filled those out?

10 A. I don't know what that is.

11 Q. Okay. So it would be a list of questions in  
12 preparation of trial that was sent to Otter Tail,  
13 essentially your counsel on your behalf, requesting a  
14 cost -- what your cost estimate would be for extension  
15 of service.

16 And you don't know who helped counsel prepare  
17 those answers?

18 A. Are you talking about just -- I didn't fill out  
19 any official forms.

20 Q. Okay.

21 A. But we went over the itemized -- the important  
22 itemized list of the costs for the project together.

23 Q. Okay. And so -- but you're telling me that  
24 initially your cost estimate was drafted sometime  
25 in 2019?

1           A. This project has been drug on a long time. It's  
2           been a long time since the initial cost estimate was  
3           drafted up. So I don't know what the date is, but it's  
4           been well over a year.

5           Q. Okay. And so if somebody at Otter Tail said  
6           that none existed, that would not be an accurate  
7           statement; is that correct?

8           A. Depending on when they asked.

9           Q. Okay. And what if they were asked prior to the  
10          hearing that was originally scheduled in 2000 and -- the  
11          end of 2020?

12          A. I couldn't say.

13          MS. RADERMACHER: Okay. I have no further  
14          questions.

15          ALJ DAWSON: Mr. Johnson.

16          MR. JOHNSON: No questions.

17          ALJ DAWSON: Commissioner Kroshus.

18          COMMISSIONER KROSHUS: Thank you, Your Honor.

19          You know, I'm going to just get to, I think,  
20          what the heart of the matter is. I've got cost -- your  
21          cost estimate, 52,000. We know what Nodak's cost  
22          estimate to provide service is. But the bottom line is  
23          you can provide -- what would you -- would you define it  
24          as providing reliable service if you had the load?

25          THE WITNESS: Would I define this proposed

1 service to be reliable?

2 COMMISSIONER KROSHUS: Right.

3 THE WITNESS: Yes.

4 COMMISSIONER KROSHUS: Would you define, in your  
5 expert opinion, if Nodak were to provide service from  
6 their three-phase line, would that also be reliable?

7 THE WITNESS: I don't have enough knowledge of  
8 their facilities and substations and transmission lines  
9 to know.

10 COMMISSIONER KROSHUS: So you can't contest that  
11 it would be reliable service as well? Okay. So we've  
12 got that.

13 And where does the overhead transmission line  
14 originate from that has been referenced many times as  
15 the light blue dotted line, etcetera?

16 THE WITNESS: Yeah. You can see it. That's not  
17 my exhibit actually. My exhibit is on the -- yeah, it's  
18 a different one.

19 COMMISSIONER KROSHUS: Are you talking --

20 THE WITNESS: Exhibit 4.

21 COMMISSIONER KROSHUS: Exhibit 4. Okay, I've  
22 got it in front of me.

23 THE WITNESS: So if you start on the west side  
24 of the exhibit, the red line takes a 90-degree corner,  
25 comes south. Further south out of the picture, it

1 crosses the interstate, it picks up our substation in  
2 the city of Drayton, it goes north again, and then it  
3 goes straight east out of town.

4 COMMISSIONER KROSHUS: Okay.

5 THE WITNESS: So basically does a U-shape, picks  
6 up our substation in town, and goes east.

7 COMMISSIONER KROSHUS: So do you have overhead  
8 lines all over the state that other facilities cross  
9 under?

10 THE WITNESS: Yes.

11 COMMISSIONER KROSHUS: It's pretty common?

12 THE WITNESS: Very common.

13 COMMISSIONER KROSHUS: Okay. All right. No  
14 other questions. Thank you.

15 ALJ DAWSON: Commissioner Fedorchak.

16 COMMISSIONER FEDORCHAK: I don't have any  
17 questions, Judge. Thank you.

18 ALJ DAWSON: Commissioner Christmann.

19 COMMISSIONER CHRISTMANN: Nor do I. Thanks.

20 ALJ DAWSON: Any further questions?

21 MR. SANDERSON: Just briefly.

22 REDIRECT EXAMINATION

23 BY MR. SANDERSON:

24 Q. Mr. Jacobson, regarding this potential  
25 interference, before you would do any excavating or

1 boring, Otter Tail would have locates performed by any  
2 utilities in the area?

3 A. Of course.

4 Q. Okay. And the line locating that would be done,  
5 it would be up to Otter Tail as a utility in the area to  
6 go out and locate its facilities; correct?

7 A. Yes.

8 Q. And just so we're clear, you would not run, and  
9 I believe your testimony -- you would not cross an  
10 existing underground facility with your underground  
11 facility. Was that your testimony?

12 A. That would be a very undesirable design choice.

13 Q. And certainly, as designed currently, your  
14 proposed underground facility that you propose to serve  
15 Love's is approximately 50 feet away from the existing  
16 underground -- Nodak's existing underground in  
17 McFarland's?

18 A. Give or take.

19 MR. SANDERSON: I have no further questions.  
20 Thank you.

21 ALJ DAWSON: Any further questions?

22 MS. RADERMACHER: No, Your Honor.

23 ALJ DAWSON: Seeing no further questions, you  
24 may step down.

25 Any further witnesses, Mr. Sanderson?

1 MR. SANDERSON: One more, Your Honor, and at  
2 this time Otter Tail would call Chris Waltz. And he's  
3 being called via teleconference.

4 ALJ DAWSON: Mr. Waltz, were you here for my  
5 previous warnings as to perjury?

6 MR. WALTZ: Yes, I was.

7 ALJ DAWSON: So you understand what perjury is  
8 and the penalties for it?

9 MR. WALTZ: Yes, I do.

10 ALJ DAWSON: Understanding so, do you promise or  
11 swear that the testimony that you're about to give will  
12 be the truth, the whole truth, and nothing but the  
13 truth?

14 MR. WALTZ: Yes, I do.

15 ALJ DAWSON: Mr. Sanderson, you may begin.

16 MR. SANDERSON: Thank you.

17 **CHRIS WALTZ,**

18 being first duly sworn, was examined and testified as  
19 follows:

20 DIRECT EXAMINATION

21 BY MR. SANDERSON:

22 Q. Good afternoon, Mr. Waltz. Can you please state  
23 your full name and business address?

24 A. Yeah. Chris Waltz. Located, 215 South Cascade  
25 Street, Fergus Falls, Minnesota.

1 Q. And, Mr. Waltz, whom are you employed by?

2 A. I'm employed by Otter Tail Power Company.

3 Q. And, Mr. Waltz, you had intended to be here but  
4 you've been a little under the weather lately. Are you  
5 feeling okay?

6 A. Yeah. I'm feeling better today. I apologize  
7 for not being able to be there in person, but sure --  
8 sure appreciate the gratitude to be able to testify  
9 nonetheless and (indiscernible) so I appreciate that.

10 Q. And, Mr. Waltz, could you please explain what  
11 your position with Otter Tail is?

12 A. Yeah. I manage our sales and program -- program  
13 implementation team for Otter Tail.

14 Q. And just describe your job responsibilities with  
15 Otter Tail.

16 A. Sure. So I -- I manage a team of energy  
17 management representatives, commercial and industrial  
18 representatives, industrial engineers, financial  
19 analysts that's geographically located throughout our  
20 70,000-square-mile service territory. And principally  
21 what we're responsible for is the implementation of our  
22 demand side management programs with our customers.

23 So it was referenced earlier about load  
24 management, load control. We do all of that program  
25 implementation as well as the management of our RP

1 account customers, commercial, industrial, etcetera.  
2 And then we're responsible for, you know, customers'  
3 expansions, new customers coming to Otter Tail, and just  
4 working with them to ensure that -- that we're meeting  
5 their expectations in service.

6 Q. As part of your service territory, does that  
7 encompass the city of Drayton?

8 A. Yes.

9 Q. And Otter Tail provides electric service to  
10 customers within the city of Drayton?

11 A. Yes, we do.

12 Q. And briefly describe your educational  
13 background.

14 A. Sure. You know, I -- I -- I'm a certified  
15 energy manager with the Association of Energy Engineers.  
16 I have a bachelor of science degree from the University  
17 of Minnesota, Crookston, and then a master of science  
18 degree from the University of Minnesota, Twin Cities in  
19 energy and environmental policy.

20 Q. And could you just briefly describe your  
21 employment background after college?

22 A. Sure. Yeah, I've been in the electric utility  
23 space for over ten years now. And I've been with Otter  
24 Tail a little over six years.

25 Q. Now, as part of your job responsibilities with

1 Otter Tail, are you familiar with the proposed Love's  
2 Truck Stop near Drayton?

3 A. Yes, I am.

4 Q. And could you explain to the Commission what has  
5 been your involvement with that project?

6 A. Sure. Myself and my team became involved in the  
7 project shortly after Love's reached out to us. So they  
8 reached out to local staff, and then the local staff  
9 contacted us, and that's how we developed a relationship  
10 directly with Love's.

11 Q. And when did Otter Tail first become aware of  
12 this proposed facility?

13 A. Yeah. You know, we became aware of the project,  
14 I believe it was that January 2019 time frame.

15 Q. And your understanding, and we've heard the  
16 testimony, but what is the location of the proposed  
17 Love's facility?

18 A. Oh, sure. The property is located on the west  
19 side of I-29 and just south of Highway 66 there in the  
20 annexed property that's been described, just right in  
21 that corner.

22 Q. And has that property of the proposed site been  
23 annexed into the city of Drayton?

24 A. Yes, it has.

25 Q. Did Otter Tail have any involvement in the

1 property being annexed into the city?

2 A. No, we did not.

3 Q. And does Otter Tail have a franchise to provide  
4 service to the city of Drayton?

5 A. Yes, we do.

6 Q. How long has Otter Tail held a franchise and  
7 been providing electric service to customers within the  
8 city of Drayton?

9 A. Yeah. The best that we can show we've been  
10 providing, actually, the furthest dated-back franchise  
11 agreement that we have with the community of Drayton was  
12 from 1931. So I would anticipate maybe before that, but  
13 as far back as that.

14 Q. And so at least your records show you've been  
15 continuously providing -- or Otter Tail has been  
16 continuously providing electric service to the city of  
17 Drayton for the last 90 years?

18 A. That is correct.

19 Q. You heard some testimony here today. Does Otter  
20 Tail's current franchise with the city of Drayton  
21 require it to provide service to the Love's facility  
22 pursuant to the terms of your franchise agreement?

23 A. Yes, it does.

24 Q. Now, you've heard a number of -- well, let me  
25 ask you this, Mr. Waltz. Have you been present and

1 observing this hearing since the start this morning?

2 A. Yes. For the most part, yes.

3 Q. Okay. You've heard a number of -- or you've  
4 heard testimony regarding a number of communications  
5 between Otter Tail and Nodak. Have you been part to a  
6 number of those conversations?

7 A. Yes. I was party to several of those  
8 conversations that were previously testified to --

9 Q. And --

10 A. -- my -- oh, sorry.

11 Q. No. And I was simply going to ask, Mr. Waltz,  
12 can you just explain to the Commission the timeline of  
13 your communications with Nodak regarding service to this  
14 Love's facility?

15 A. Sure. Yeah, the first meeting we had was a  
16 meeting between Otter Tail Power and -- and Nodak  
17 Electric Cooperative. So our area manager, who's based  
18 out of Jamestown, North Dakota, and I met in Grand Forks  
19 with -- with Mylo and Steve. And that's where we had  
20 the initial conversations about service, discussions on  
21 the -- the up and coming annexation that was yet to just  
22 be passed by the city council. And then we subsequently  
23 scheduled meetings after that as well.

24 Q. And how many times have you either met in person  
25 or had telephone communications with representatives of

1 Nodak to discuss service issues for this facility?

2 A. Yeah. I -- I believe it was -- it was three  
3 times that -- that we had -- we had conversations with  
4 Nodak.

5 Q. And what do you recall from those -- you  
6 mentioned what happened at the initial meeting in Grand  
7 Forks. Can you kind of describe the other two times  
8 that you've had communications with Nodak, both who was  
9 present and what was said?

10 A. Sure. So in the other discussions that we had  
11 with Nodak, both Love's Travel Stop and the City of  
12 Drayton were represented at those meetings. And again,  
13 as -- as testified to earlier, it was, you know, in an  
14 attempt to -- to reach an amicable resolution here  
15 without moving forward with contention.

16 Love's at the time and -- and subsequently the  
17 City as a result, but Love's was very concerned that --  
18 you know, about project delays and had referenced some  
19 speed to market, you know, items that were important to  
20 them. They subsequently had some delays in their  
21 project. I believe Steve Walters testified to some of  
22 the -- the onsite engineering and prep work that they  
23 needed to do, which ultimately delayed the project. But  
24 those were some chief concerns among the customer and  
25 then, subsequently, the City.

1           And so we -- the goal of those meetings were to  
2 discuss -- or basically request Nodak not to contend the  
3 load.

4           Q.   And during those meetings, did the City of  
5 Drayton and Love's request Nodak not contest this  
6 service?

7           A.   Yes, they did.  Both parties did, yes.

8           Q.   Now, you heard some hypotheticals that were  
9 asked of the representative of Nodak but -- and I'll ask  
10 you a similar question.  If the City of Drayton had come  
11 to you, your customer, and requested that you not  
12 provide service to McFarland's Addition and Love's Truck  
13 Stop, would you be sitting here contesting this issue?

14          A.   No.  We actually had discussions with Love's  
15 Travel Stop and the City regarding that very topic.  We  
16 were very open with the City of Drayton especially that  
17 we recognized how important this potential development  
18 was for them and we did not want to be a hindrance to  
19 that economic development opportunity for the community.  
20 We discussed with them possibilities if -- if Love's  
21 ultimately selected Nodak for service, you know, that we  
22 would ask the City to execute a limited franchise to  
23 serve that load specifically if we had (indiscernible).

24          Q.   Mr. Waltz, I have no further questions.  Thank  
25 you.

1 ALJ DAWSON: Ms. Radermacher.

2 MS. RADERMACHER: Yes.

3 CROSS EXAMINATION

4 BY MS. RADERMACHER:

5 Q. Hello, Mr. Waltz.

6 A. Hi.

7 Q. I just have a -- just briefly, did you ever  
8 prepare a cost estimate of what your rates would be,  
9 like what the annual revenue or -- annual revenue to  
10 Otter Tail and ultimate cost to Love's Truck Stop would  
11 be relative to this load?

12 A. Yes, we did. We provided that. And then we  
13 also provided Love's with our commission-approved tariff  
14 sheets, the rates that they would be eligible for under  
15 our general rules and regs.

16 Q. Okay. And were you privy to the interrogatories  
17 that Nodak Electric served on Otter Tail?

18 A. Yes, I was.

19 Q. And did you help prepare the responses to those?

20 A. Yes, I did.

21 Q. And did you provide the estimate that you had  
22 created back on June 24th of 2019 --

23 A. Yes, I did.

24 Q. -- as an exhibit?

25 MS. RADERMACHER: I have what's been labeled as

1 Nodak 12. I'm not sure how to show the witness.

2 THE WITNESS: I do have that up in a PDF here, I  
3 believe. If you want to verbally describe it, I think I  
4 can pull up the correct document (indiscernible).

5 Q. Okay. I currently have the document that's  
6 listed as Nodak 12, is "OTP - North Dakota Large General  
7 Service Rate 603," and then it says for Love's Drayton,  
8 and it's a two-page document. And it kind of goes  
9 through monthly electric readings, base rate, riders,  
10 electrical, rider calculations. And then you have total  
11 annual estimated costs of approximately \$78,363.58?

12 A. Correct.

13 Q. Okay.

14 A. Yes, I'm looking at that.

15 Q. Okay. And so the document that I was just  
16 reading from, would you agree that it's most likely a  
17 true and correct copy of what you've submitted as part  
18 of your interrogatory responses? Is this --

19 A. Yes.

20 Q. Is this the same document that you also provided  
21 to Love's Travel Stop?

22 A. Yes, it is.

23 MS. RADERMACHER: I would move to enter Nodak  
24 Exhibit 12.

25 MR. SANDERSON: I have no objection.

1 MS. RADERMACHER: And I apologize you don't have  
2 it because it was a rebuttal.

3 ALJ DAWSON: Okay. So marked and admitted.  
4 You just have the one copy?

5 MS. RADERMACHER: Actually, I have multiple  
6 copies but it's not -- I would have to pull parts of it  
7 -- because I'm only introducing part of it.

8 ALJ DAWSON: Okay.

9 MS. RADERMACHER: So I can do that fairly --

10 ALJ DAWSON: Are you going to ask more questions  
11 about it?

12 MS. RADERMACHER: No. But if the Commission  
13 would prefer to have a separate copy, like I said, I did  
14 make additional copies.

15 ALJ DAWSON: Yeah, I think they should have a  
16 copy of it.

17 MS. RADERMACHER: Thank you. I can certainly do  
18 that. And I apologize because at the time I did not  
19 realize there was an attachment that didn't relate to it  
20 (indiscernible). Sorry about that.

21 Would you like one, Mr. Johnson, as well?

22 MR. JOHNSON: Sure.

23 MS. RADERMACHER: Okay.

24 (Pause)

25 UNIDENTIFIED SPEAKER: Kim, it's just those

1 first two pages; right?

2 MS. RADERMACHER: Yes, yes.

3 UNIDENTIFIED SPEAKER: All right. No problem.

4 MS. RADERMACHER: And that's what -- that was  
5 the issue, because I didn't realize that you guys had --  
6 I thought it all related to yours.

7 UNIDENTIFIED SPEAKER: No. You're good. I have  
8 no (indiscernible).

9 MS. RADERMACHER: Okay.

10 BY MS. RADERMACHER:

11 Q. I guess the only other question I'd have is you  
12 indicated that the city -- or that Otter Tail Power  
13 would be willing to have conceded the load had Love's  
14 chosen Nodak; is that correct?

15 A. That is correct.

16 Q. Okay. And prior to the annexation into the city  
17 of Drayton, would you agree that that was, in fact,  
18 Nodak's service territory?

19 A. Before annexation, yes.

20 Q. Okay. And do you realize that Nodak is still  
21 disputing that it is its service territory? Is that  
22 correct?

23 A. That's the dispute.

24 Q. Yes.

25 MS. RADERMACHER: I have no further questions.

1 ALJ DAWSON: Any further questions?

2 Mr. Johnson?

3 MR. JOHNSON: No, Your Honor.

4 ALJ DAWSON: Commissioner Kroshus?

5 COMMISSIONER KROSHUS: Just a point of  
6 clarification. Exhibit 12, is that -- is this from the  
7 company or from Otter Tail Power, or would this be  
8 calculations provided by Nodak?

9 MS. RADERMACHER: This was -- may I answer that,  
10 Your Honor?

11 ALJ DAWSON: You may answer it.

12 MS. RADERMACHER: Commissioner Kroshus, that  
13 is -- actually was drafted by Mr. Waltz, as he indicated  
14 that he did draft that back in 2019. That was given to  
15 not only Love's but also provided to Nodak as part of  
16 interrogatories or discovery that took place.

17 COMMISSIONER KROSHUS: Okay. Thank you for  
18 clarifying. I didn't catch that. I don't have any  
19 questions.

20 ALJ DAWSON: Commissioner Fedorchak.

21 COMMISSIONER FEDORCHAK: Thank you.

22 Thank you, Chris. Just two questions for you.  
23 First of all, it's been curious to me, and you're the  
24 last witness so you get this question, that there has  
25 been some belief that customers get to pick whoever they

1 want to be their -- to provide their electric service.  
2 Do you think that's a fair assumption to make based on  
3 North Dakota law, that somebody moving into this  
4 location would get to pick whoever they want to provide  
5 electric service?

6 THE WITNESS: No, I don't think that that's a  
7 correct characterization. You know, this load, and any  
8 other load within the municipal boundary of Drayton, you  
9 know, we are obligated, Otter Tail Power, to provide  
10 that service. So in situations like that, I would say  
11 no.

12 And I think the -- you know, there's North  
13 Dakota law and statute that recognizes the situations  
14 where, you know, service can be provided outside of that  
15 municipal boundary, you know, that that's already been  
16 discussed today too.

17 COMMISSIONER FEDORCHAK: Prior to -- so when  
18 you're talking to customers, because you're in the  
19 economic development side of things, do you characterize  
20 it that way, that they can pick who they want or things  
21 can be -- you can annex territory in order to bring them  
22 within your service territory? I mean, this seems to go  
23 kind of contrary to the agreements that are in place for  
24 service territories.

25 THE WITNESS: Correct. We do not have

1 conversations about, you know, needing to annex. Just  
2 as we did in this situation, we didn't have those  
3 conversations with the customer or the community. Those  
4 were had prior to OTP involvement, and subsequently  
5 service was discussed after that.

6 COMMISSIONER FEDORCHAK: So --

7 THE WITNESS: We did outline, and what I  
8 mentioned earlier was that if -- you know, we felt very  
9 strongly at least that this was the direction of, you  
10 know, the customer and ultimately the community, but we  
11 were very open with the community of Drayton, because  
12 they were very adamant that they wanted this for  
13 development opportunity, and if -- if the customer  
14 ultimately chose Nodak for service, if they -- if they  
15 selected that, what we requested of the city is that  
16 they would execute a limited franchise for Nodak to be  
17 able to serve with -- within the municipal boundary and  
18 within the franchise that currently exists.

19 COMMISSIONER FEDORCHAK: So in your early  
20 conversations with Love's, it sounded like Steve Walters  
21 was saying that there was understanding among the  
22 company that they got to pick who provided their  
23 service. Were you part of any of that discussion, or  
24 those discussions at that point, or where did that come  
25 from, that assumption?

1           THE WITNESS:  Yeah, I was not a party to those,  
2 nor my team.  But really, the discussion about Otter  
3 Tail service developed from the standpoint of that  
4 property becoming annexed and as part of the -- the  
5 franchise that we had with the city.

6           COMMISSIONER FEDORCHAK:  Okay.  And then in --  
7 one other question.  You talked about some of those  
8 meetings in January, I think, and February, or whenever  
9 they were, with -- I lost my timeline -- with Nodak and  
10 you guys and Love's, I think, or the mayor, trying to  
11 kind of reach an agreement.  What was in it for Nodak to  
12 basically concede this?  Like what benefit would they  
13 have gotten by conceding?

14          THE WITNESS:  Sure.  I think, you know, the  
15 premise that -- that the mayor testified to and what he  
16 really spoke to during those meetings was the growth and  
17 development opportunity for that area.  So, you know, I  
18 -- I think -- or I guess I would understand that that  
19 particular service, you know, wouldn't be provided by  
20 Nodak.  But generally speaking, in the economic  
21 development space, when an area or region is growing  
22 like that, it does benefit everybody, whether that's a  
23 now housing development that outside -- you know, ends  
24 up being outside of the city or -- or a couple of single  
25 family homes or other businesses that -- that spur up as

1 a result so...

2 COMMISSIONER FEDORCHAK: Okay. Very good.

3 Thank you. That's all the questions for me.

4 ALJ DAWSON: Commissioner Christmann.

5 COMMISSIONER CHRISTMANN: You've twice now  
6 mentioned that had the -- had the company chosen Nodak,  
7 you would have recommended that the city file a separate  
8 franchise for that subdivision. Did I understand that  
9 correctly?

10 THE WITNESS: Correct.

11 COMMISSIONER CHRISTMANN: And so does that  
12 indicate to me that you feel that the current franchise  
13 is exclusive and only Otter Tail can serve within the  
14 city limits?

15 THE WITNESS: I do not believe that it is an  
16 exclusive franchise.

17 COMMISSIONER CHRISTMANN: Then why would you  
18 have suggested that they get a separate franchise as  
19 opposed to just serving it?

20 THE WITNESS: Sure. It was -- at the time it  
21 was under direction from our general counsel that a  
22 clean understanding of service to this load, the  
23 understanding -- at least I believe the thought process  
24 was, you know, that the property is annexed into the  
25 city and, therefore, Otter Tail is obligated to serve

1 that entire area, not just that particular customer.  
2 And so the -- the thought process was if this customer  
3 chose or wanted Nodak service, that we would ask for a  
4 limited franchise.

5 COMMISSIONER CHRISTMANN: But so your testimony  
6 now is that you don't believe that the current franchise  
7 is exclusive; correct?

8 THE WITNESS: I don't -- I don't specifically  
9 think that it is an exclusive franchise.

10 COMMISSIONER CHRISTMANN: Are you familiar with  
11 Otter Tail's January 7th filing? And I'm just picking  
12 out one sentence, I know, on page 4 but it says:

13 "For all practical purposes, Otter Tail's  
14 franchise is exclusive, subject to future  
15 decisions by the City of Drayton."

16 So do you disagree with that filing?

17 THE WITNESS: No, I would not disagree with that  
18 filing, I guess. No.

19 COMMISSIONER CHRISTMANN: So the filing is  
20 right, that all for practical purposes it's exclusive,  
21 but you don't think it's exclusive. I'm really mixed  
22 up.

23 THE WITNESS: I -- I apologize, just based on  
24 previous testimony and -- yeah, I guess my -- my  
25 understanding is that, you know, we -- we hold the only

1 franchise in the community of Drayton.

2 COMMISSIONER CHRISTMANN: Okay.

3 THE WITNESS: And therefore we would serve.

4 COMMISSIONER CHRISTMANN: And would it surprise  
5 you to know that in section 9 of that franchise, and  
6 again I'm just reading part of a sentence, it says that  
7 it is subject to the rules and regulations laid down by  
8 the Public Service Commission?

9 THE WITNESS: I believe we have that in all of  
10 our franchise agreements in North Dakota.

11 COMMISSIONER CHRISTMANN: Okay. So you had  
12 mentioned a moment ago about, in the economic  
13 development world, development benefits kind of  
14 everybody in the neighborhood, maybe this would bring on  
15 some other development that Nodak would benefit from.

16 Did I kind of understand that correctly?

17 THE WITNESS: Yep, that's correct.

18 COMMISSIONER CHRISTMANN: So as I'm hearing  
19 Otter Tail's case today, is it your perception that any  
20 land that a city annexes that doesn't have a meter on  
21 it, an Otter Tail city I'm talking about, that that is  
22 then an Otter Tail load?

23 THE WITNESS: I believe pursuant to our  
24 franchise agreements and if we have the direction of the  
25 city to serve the load, that we would be obligated to

1 serve that load.

2 COMMISSIONER CHRISTMANN: So what opportunity  
3 does that leave for the cooperatives then, if every time  
4 there's going to be a development, they annex it in and  
5 then that makes it yours, that apparently none of these  
6 lines or agreements mean anything?

7 THE WITNESS: Yeah, I think -- I think if we  
8 look at other economic development opportunities, that  
9 that generally isn't the case. There's usually, you  
10 know, other ancillary -- other ancillary businesses or  
11 other development opportunity that does occur on -- you  
12 know, both where the cooperatives would serve or the --  
13 the public or investor-owned utility.

14 COMMISSIONER CHRISTMANN: But so the business  
15 that was at some point today described as the one that  
16 appears to have a brown roof that is just off to the  
17 east of I-29, in that northwest corner of Drayton, I  
18 understand it that when -- when the 1968 agreement went  
19 into effect, that was not there and was outside of the  
20 city limits; is that correct?

21 THE WITNESS: I do not know. I'm sorry, I do  
22 not know.

23 COMMISSIONER CHRISTMANN: Okay. Well, then just  
24 one last thing. I'm again looking at that January 7th  
25 filing. And on page 5 there's a sentence that says:

1           However, under the new law -- and the  
2           previous sentence references the one passed  
3           in 2005.

4           Under the new law, a service area agreement  
5           is only valid and enforceable if the service  
6           area agreement is filed with the Commission  
7           and the Commission approves the agreement.

8           Is that how -- what you believe to be the case?

9           THE WITNESS: Yes. That is my understanding.

10          We do have other service area agreements with  
11          neighboring cooperatives that have been filed and -- and  
12          we operate under those agreements --

13                 COMMISSIONER CHRISTMANN: Can you tell me about  
14          -- I'm sorry, I talked over the last part of your  
15          sentence.

16                 THE WITNESS: That's okay. I was just going to  
17          say per the orderly growth and development of those  
18          communities.

19                 COMMISSIONER CHRISTMANN: Okay. Can you tell me  
20          about how many communities have refiled and been  
21          approved since 2005 and how many are still subject to  
22          the 1968 agreement, for whatever it's worth?

23                 THE WITNESS: Yeah. It's a good question. And  
24          I apologize, I don't -- I don't know numbers or  
25          quantities.

1 I can tell you that we -- you know, we had  
2 agreements before 2005 and subsequently after that, that  
3 law was enacted. The areas that both Otter Tail and the  
4 cooperatives could find agreement on were entered into,  
5 submitted, and followed the execution of the particular  
6 community, and then that was filed with -- with the  
7 commissions. I believe there -- you know, that there  
8 was hearings and such, and then the commissions would  
9 ultimately approve or not approve those agreements. But  
10 I, unfortunately, don't know the quantities.

11 COMMISSIONER CHRISTMANN: But it's Otter Tail's  
12 testimony today then that for communities like Drayton,  
13 that where the cooperative and Otter Tail have not  
14 refiled since 2005, there is no longer a service  
15 agreement, the 1968 agreement is null and void?

16 THE WITNESS: Correct. We -- we didn't know,  
17 and it was probably a due diligence on our end, quite  
18 frankly, but we did not know of a service agreement with  
19 Nodak Electric prior to our initial meeting with -- with  
20 them in Drayton. We didn't operate under an agreement.

21 COMMISSIONER CHRISTMANN: Okay. I have no other  
22 questions.

23 ALJ DAWSON: Mr. Sanderson.

24 MR. SANDERSON: Thank you.

25 ///

1 REDIRECT EXAMINATION

2 BY MR. SANDERSON:

3 Q. Mr. Waltz, I do have a few follow-ups.

4 You were asked about that customer preference  
5 and whether customers get to pick whoever they want for  
6 service. And I believe your testimony is that's not how  
7 Otter Tail operates, that customer preference is the  
8 controlling factor for service. Is that your testimony?

9 Is that a yes?

10 A. Yes.

11 Q. Okay. Sorry, not to be rude, just so we have a  
12 clear record.

13 But do you agree, Mr. Waltz, that while the  
14 customer doesn't get to pick whoever they want to  
15 provide service, the city does have a constitutional  
16 right to pick whoever they want to serve?

17 A. Yes.

18 Q. Okay. And, Mr. Waltz, you were asked some  
19 questions by Mr. Christmann, where does this leave the  
20 cooperatives in these situations. There's nothing that  
21 prevents a city from selecting a co-op to serve a load  
22 within the city; correct?

23 A. Correct.

24 Q. And there's nothing that prevents the co-op from  
25 obtaining a franchise to serve a customer within the

1 city; correct?

2 A. Correct.

3 Q. And you're aware of situations in North Dakota  
4 where co-ops actually have franchises and serve  
5 customers within a city?

6 A. Yes.

7 Q. And you're aware through your involvement in  
8 this case, that -- that, in fact, Nodak attempted to get  
9 a franchise from the City of Drayton?

10 A. Yes, they did.

11 Q. And that the City of Drayton elected not to  
12 grant a franchise to serve?

13 MS. RADERMACHER: Objection, Your Honor.

14 A. That is correct.

15 MS. RADERMACHER: He misstates facts that are  
16 not in evidence. Nobody -- even Mr. -- or the mayor  
17 never testified that they had ever taken the matter of  
18 the franchise up and, in fact, denied it. That is not  
19 in record.

20 MR. SANDERSON: May I respond?

21 ALJ DAWSON: Yes, you may.

22 MR. SANDERSON: I think every witness has  
23 testified to that the City of Drayton has not granted a  
24 franchise to --

25 MS. RADERMACHER: I will agree that is better

1        termed or better phrased, because they have not granted,  
2        but this matter has never been taken up and ruled on by  
3        the City of Drayton. To my knowledge --

4                ALJ DAWSON: I agree with --

5                MS. RADERMACHER: -- there's no evidence in the  
6        record.

7                ALJ DAWSON: I agree with her, and I agree with  
8        the second statement of you as well. It's a fine line.

9                MR. SANDERSON: Okay. And we can play the  
10       semantics game, Judge. I'll rephrase my question.

11       BY MR. SANDERSON:

12               Q. Mr. Waltz, you're certainly aware the City of  
13       Drayton has never granted Nodak a franchise?

14               A. That is correct.

15               Q. Okay. Now, you were asked about this exclusive  
16       franchise, and your testimony was that it's your belief  
17       that Otter Tail's franchise is an exclusive -- well, is  
18       not an exclusive franchise; correct?

19               A. Correct, just based on the testimony today.

20               Q. Yep. And certainly you -- you understand that  
21       if the City of Drayton wanted to give Nodak or any other  
22       electric provider a franchise, they certainly could do  
23       so?

24               A. That's my understanding, yes.

25               Q. Okay. Now, you were asked specifically about a

1 provision on page 4 of Otter Tail Power's reply brief in  
2 support of its motion to dismiss, and in it that -- the  
3 provision that Commissioner Christmann read to you, that  
4 although the City of Drayton retained the right to grant  
5 additional franchises, it has declined to do so.  
6 Specifically, the City of Drayton has declined to grant  
7 a franchise to Nodak, for all practical purposes Otter  
8 Tail's franchise is exclusive subject to future  
9 decisions by the City of Drayton. That's the provision  
10 that was read to you.

11 Is it your understanding that that is -- that  
12 comes from the Divide County Crosby 1971 North Dakota  
13 Supreme Court opinion in which the North Dakota Supreme  
14 Court found that MDU's franchise, in essence, was  
15 exclusive --

16 MS. RADERMACHER: I would object, Your Honor.  
17 Again, calling for a legal conclusion, and I feel like  
18 counsel's testifying.

19 MR. SANDERSON: I'm asking about the basis of  
20 Mr. Waltz's understanding of his testimony.

21 ALJ DAWSON: The question is fair.

22 Q. Okay. And, Mr. Waltz, your understanding of  
23 that opinion was the North Dakota Supreme Court's  
24 finding that Montana Dakota Utilities' franchise was  
25 exclusive since it possessed the -- in essence, was

1 exclusive since it possessed the only franchise to serve  
2 the city of Crosby?

3 A. Yes, that's my understanding.

4 Q. And in the present case, Otter Tail possesses  
5 the only franchise to serve the city of Drayton?

6 A. Yes, that's my understanding.

7 Q. Now, you were asked about the franchise subject  
8 to the rules and regulations of -- of the Commission.  
9 And you said that's something Otter Tail includes in its  
10 franchises. Can you just elaborate on why that  
11 provision is included?

12 A. Sure. We are regulated by the Public Service  
13 Commission of North Dakota, and -- and as changes are  
14 set forth by the Commission to Otter Tail Power, whether  
15 it be rates, rate cases, provisions to our general rules  
16 and regs, that -- that would have to be incorporated.

17 Q. Certainly. And one of the things, and this ties  
18 into the last line of questioning I want to ask you  
19 about, that Exhibit 12. The rates that you quoted to  
20 Love's, where did you get those rates from?

21 A. Yeah. Those are our commission-approved public  
22 tariff sheets. So we did a -- the rate analysis  
23 specific to Love's. And then we also sent them the  
24 actual tariff sheets. And that's, I believe, what Steve  
25 Walters testified to where -- where his utility

1 department did their own calculations.

2 Q. And those rates and tariff sheets that you  
3 provided have been previously approved by this  
4 Commission in Otter Tail's last rate case?

5 A. That is correct.

6 Q. Now, and just so we're clear, when that  
7 provision that you were asked about, section 9, subject  
8 to rules and regulations. For example, if the City of  
9 Drayton came to you and said, we want you to provide  
10 service at, you know, significantly reduced rates than  
11 what's been approved, that's not something Otter Tail  
12 could do or would do; correct?

13 A. Correct.

14 Q. And that's -- that's the intent of that  
15 provision, that your service is subject to the rules and  
16 regulations of the North Dakota Public Service  
17 Commission?

18 A. Correct.

19 Q. Okay. Now, you were asked about Exhibit 12, the  
20 Otter Tail proposal. And that is something, when Love's  
21 approached you and asked for a proposal of rates, that's  
22 the document you provided of Nodak's rates and based on  
23 the -- based upon the commission-approved rates and your  
24 understanding of the service requirements. Is that my  
25 understanding?

1 A. Yes.

2 Q. And I believe Exhibit 12 you testified to, that  
3 Otter Tail's rates would be \$78,363. That's identified  
4 in Exhibit 12?

5 A. Yes.

6 Q. Now, Nodak's counsel did not introduce the other  
7 -- the other document you prepared, but you also, at the  
8 time you submitted that proposal, you prepared a  
9 proposal regarding Nodak's published rates for the exact  
10 same service; is that correct?

11 A. Correct.

12 Q. And so you provided them an apples-to-apples  
13 comparison of -- you know, based on the published rates  
14 and the voltage usage expected for that facility?

15 A. Yes. We used their -- their known and public  
16 rates that were on their website and provided the data  
17 according to that. I believe there's testimony, again,  
18 from Steve Walters where he and -- and Mylo had  
19 additional conversations on rates or -- or maybe  
20 discounted rates that the cooperative might be willing  
21 to provide. So I was not privy to any of those.

22 Q. And do you have that proposal of Nodak's rates  
23 that you prepared?

24 A. (Indiscernible) pull it up here --

25 MS. RADERMACHER: Your Honor, I would object to

1 the introduction of this exhibit just from the  
2 standpoint that it's an estimate put together, but we  
3 have -- Nodak has actually submitted our actual rates.  
4 Had we not done that, I would see it appropriate, but at  
5 this point, what they project our rates to be versus  
6 what Nodak themselves provided to the entity, I don't  
7 know what the relevance of it is.

8 ALJ DAWSON: Mr. Sanderson.

9 MR. SANDERSON: Certainly. And first, I'm not  
10 offering this exhibit. But the door was opened to this  
11 line of questioning by counsel, and she took two pages  
12 of a four-page document that Mr. Waltz prepared, and I'm  
13 asking him about the comparison.

14 And I believe it certainly is relevant to the  
15 extent -- to the extent Nodak believes that cost of  
16 service is relevant to this. So it's also responding  
17 and rebutting the evidence that's been presented.

18 ALJ DAWSON: I'll allow it for now.

19 MR. SANDERSON: Okay. And it's simple.

20 BY MR. SANDERSON:

21 Q. And, Mr. Waltz, my question simply was, what was  
22 your calculation of Nodak's rates in an apples-to-apples  
23 comparison?

24 A. Sure. Our estimation was that the Nodak  
25 Electric's annual rates or annual cost of service would

1 be about \$110,000.

2 Q. Okay. And so just by my quick math, your  
3 calculation was Nodak's proposed published rates were,  
4 roughly, \$32,000 higher than Otter Tail's?

5 A. Yes, that's correct.

6 Q. And finally, I want to ask you, Commissioner  
7 Christmann asked you some questions about whether you  
8 believe the service area agreement is a contract and is  
9 enforceable. Otter Tail's not disputing that in 1968,  
10 that it entered into a service area agreement with  
11 Nodak; correct?

12 A. That is correct.

13 Q. Okay. The provision, what we do dispute, or  
14 Otter Tail disputes in this case, is whether that  
15 service area agreement is enforceable by this  
16 Commission, whether that contract is?

17 A. That is correct.

18 Q. Okay. And you're aware at no point has Nodak or  
19 Otter Tail filed that service area commission with -- or  
20 that service area agreement with the Commission for  
21 approval?

22 A. No.

23 Q. And your understanding of that 1968 service area  
24 agreement, was that ever -- or did either Otter Tail or  
25 Nodak ever receive approval or consent to that agreement

1 from the City of Drayton?

2 A. I'm sorry, can you repeat the question?

3 Q. Yep. Well, let me rephrase it.

4 Was the City of Drayton party to the 1968  
5 service area agreement between Otter Tail and Nodak, to  
6 the best of your understanding?

7 A. I'm sorry. No. No, they were not.

8 Q. Okay. And you heard the testimony that -- from  
9 the president and CEO of Nodak who believes that the  
10 service area agreement is binding upon the City of  
11 Drayton. Do you recall that testimony?

12 A. Yes.

13 Q. Is it Otter Tail's position that the 1968  
14 service area agreement supersedes the city of Drayton's  
15 constitutional rights to select the electric service  
16 provider within the city?

17 A. No.

18 Q. Mr. Waltz, no further questions. Thank you.

19 ALJ DAWSON: Ms. Radermacher.

20 MS. RADERMACHER: Yes.

21 RE CROSS EXAMINATION

22 BY MS. RADERMACHER:

23 Q. Mr. Waltz, were you around in 1968?

24 A. No, I was not.

25 Q. So you stated affirmatively and with such

1 conviction that the city of Drayton was, in fact, not  
2 part of the negotiations of the 1968 agreement, but you  
3 have no personal knowledge of that, do you?

4 A. No, I do not.

5 Q. On your -- now, as counsel called it, an  
6 apples-to-apples comparison, would you agree you were  
7 not privy to any conversations that could have possibly  
8 occurred between Nodak Electric and Love's relative to  
9 the rates that were provided to them or could be  
10 provided to them should they extend service?

11 A. That is correct. I previously testified that I  
12 was not part of those discussions.

13 Q. Okay. And Nodak Electric themselves would  
14 probably be in a better position to determine what rate  
15 they could provide the consumer versus Otter Tail  
16 Electric. Would you agree?

17 A. Well, I think the customer, you know, just as  
18 Steve Walters ultimately testified, that they have --

19 Q. But no. What I'm saying, that in calculating  
20 the rates and determining what rate can be offered to  
21 the individual, wouldn't that -- so if Nodak, they would  
22 be in a better position to say what Nodak's rates are  
23 going to be for the member versus Otter Tail telling the  
24 member what Nodak Electric's rate is going to be. Would  
25 you agree?

1           A.    Correct.

2           Q.    Okay.  So it's not really an apples-to-apples  
3 comparison, would you -- correct?  Because you don't  
4 know what was provided to Love's as part of any sort of  
5 negotiation?  Would that be a fair assessment?

6           A.    This was an apples-to-apples comparison based on  
7 the known and public rates on -- on Nodak's website.

8           Q.    Okay.  But again, there could have been  
9 discounted rates or other rates that would have been  
10 provided to the member that you were -- or the proposed  
11 member that you were not privy to; correct?

12          A.    That is correct.

13          Q.    So if the Commission would give any weight to  
14 any proposed rates that would have been provided, do you  
15 think that yours carry more weight than what Nodak  
16 Electric themselves had provided to Love's Truck Stop?

17          A.    I think both rates were -- were preliminary rate  
18 estimates and I think the -- the ultimate determination  
19 by the customer and -- and their staff is the reason  
20 they decided.

21          Q.    Okay.  And I'm not asking what the preference  
22 decision was.  I'm asking you, that your calculation  
23 versus Nodak's calculation.  Because there's quite a  
24 considerable difference in some respects.  So to me, I  
25 don't think it's a fair assessment that it's an apples

1 to apples. Would you agree?

2 A. Well, I -- I can't make the determination off  
3 the analysis that Nodak did either. There's no  
4 estimates on how -- what the peak demands are, what the  
5 load factor requirements are of the facilities. So  
6 there -- there isn't a way for me to determine, you  
7 know, that the numbers that were ultimately used to  
8 derive the analysis that -- that Nodak did in their  
9 exhibit.

10 Q. Okay. So you drafted yours in June 24th of  
11 2019, which actually is my anniversary. And so based on  
12 those, has there been a rate change that has occurred  
13 since those were provided, I mean on behalf of Otter  
14 Tail? Are you currently before the PSC on a rate change  
15 request?

16 A. No.

17 Q. Okay. Now, you also kind of questioned the  
18 existence of the agreements, this 1968 service  
19 agreement. Are you saying that you were not aware of  
20 the agreement or are you saying Otter Tail as an entire  
21 entity was not aware of the existence of this agreement?

22 A. Yeah, to the best of my knowledge, we as a  
23 company were not aware of the agreement prior to our --  
24 our meeting.

25 Q. Okay. So you're stating that Otter Tail has

1 never had discussions relative to this agreement at any  
2 point from 1968 until now?

3 A. Oh, no, I'm not saying that. No. My -- my  
4 understanding is we were made aware that this agreement  
5 existed between Nodak and Otter Tail when we met with  
6 Mylo and Steve in Grand Forks.

7 Q. Okay. But are you trying to say that that was  
8 the first you were kind of apprised of it?

9 A. That is correct.

10 Q. Okay. And so did Otter Tail not partake in some  
11 of the disputes that were going on around -- outside of  
12 Devils Lake?

13 A. Oh, Otter Tail was a party to those disputes,  
14 but we didn't -- we were not aware of a specific  
15 agreement like this with the community of Drayton.

16 Q. Oh. So you're saying that you didn't know that  
17 this agreement actually pertained to Drayton? You're  
18 saying --

19 A. Correct.

20 Q. -- that you're aware that the 1968 agreement  
21 existed, you just didn't think it applied to Drayton?

22 A. Right. We never seen that -- the map that was  
23 executed by both parties in, I believe, '61 and '60. So  
24 yeah.

25 Q. Okay. I just wanted to clarify, because you

1 made it sound like you were not aware of this '68  
2 agreement whatsoever, and so I just wanted to make that  
3 clear. Because it's come up a number of times, I think,  
4 between Otter Tail and Nodak, would you agree?

5 A. Yes.

6 Q. Now, you also stated in your testimony, you  
7 talked about -- there was a question about the  
8 jurisdictional issue left to the PSC and how that's  
9 supposed to be interpreted. Is the franchise that  
10 exists between Otter Tail and the City of Drayton,  
11 that's actually an ordinance passed by the City of  
12 Drayton; correct?

13 A. I do not -- I do not know.

14 Q. Okay. Your company entered it as an exhibit and  
15 it's listed as an ordinance. So if I say that it's an  
16 ordinance, would you tend to believe me?

17 A. Yes. If that's the case, yes.

18 Q. Okay. And so that language that is included in  
19 there was actually part of an ordinance adopted by the  
20 City of Drayton?

21 A. That would be correct then.

22 Q. Okay. And so what your interpretation may be of  
23 what that provision is, is not necessarily controlling  
24 because Otter Tail didn't adopt that, the City of  
25 Drayton adopted that?

1 MR. SANDERSON: Object to the form and  
2 misstatement of the evidence with respect to the parties  
3 signing to the -- that -- that contract.

4 ALJ DAWSON: What's the exhibit number?

5 MR. SANDERSON: It is Otter Tail Exhibit 1. And  
6 I'm specifically referring to page 3.

7 ALJ DAWSON: And so it's -- you're saying that  
8 it's signed by -- say your question again.

9 MS. RADERMACHER: Okay. Just for clarification,  
10 I understand that subsequent to the adoption of the  
11 ordinance it was accepted by Otter Tail, but my  
12 understanding is he was trying to interpret what the  
13 contents were, and it was actually -- the City of  
14 Drayton would, to me, be interpreting what the contents  
15 of the ordinance would mean versus what Otter Tail.

16 MR. SANDERSON: And I'll just object to  
17 foundation and misstatement of the evidence.

18 ALJ DAWSON: I'll allow the question, but keep  
19 going.

20 MS. RADERMACHER: Okay. Thank you.

21 BY MS. RADERMACHER:

22 Q. But is it your understanding that this was an  
23 ordinance that was adopted by the City of Drayton?

24 A. Yes.

25 Q. Lastly, you had mentioned that, you know, this

1 is a growth opportunity in the area and it benefits  
2 everyone. But truly, in this situation, it benefits  
3 Otter Tail over Nodak. Would you agree?

4 A. No. I would characterize this as a -- you know,  
5 most economic development opportunities, when we work as  
6 economic developers, it's -- it's best to try to  
7 recruit, attract new businesses, customers to an area,  
8 rather than a specific location. And it is, you know,  
9 sometimes the shake of the dice that, you know, a  
10 customer chooses the site in -- in Drayton for  
11 particular reasons that are purview to their business,  
12 or Grafton or Grand Forks.

13 As a result of really when you work on things  
14 from an economic development perspective, you're much  
15 better working together as a -- as a much larger group  
16 and team promoting the state of North Dakota.

17 Q. Okay. But it's much easier for Otter Tail to  
18 take that position, would you agree, when you're the one  
19 walking away with the \$78,000 annually and Nodak is not?

20 A. No. We were very clear with -- with the  
21 community of Drayton that -- that -- well, mainly  
22 because they were very clear with us how important this  
23 was to the community, and if, ultimately, the customer  
24 would have selected Nodak service, we discussed with the  
25 city about our desire to have them execute a limited

1 franchise pursuant.

2 Q. Okay. And now extending this service now  
3 across, west of I-29, now Otter Tail has its foothold in  
4 potentially to try to gobble up more territory under  
5 annexation that would benefit Otter Tail versus Nodak.  
6 Would you agree?

7 MR. SANDERSON: I'm going to object to the form  
8 as argumentative.

9 ALJ DAWSON: Yes, it's argumentative.

10 MS. RADERMACHER: Okay. I have no further  
11 questions, Your Honor.

12 ALJ DAWSON: Mr. Johnson.

13 MR. JOHNSON: I'll be really brief. No.

14 ALJ DAWSON: Commissioner Fedorchak.

15 COMMISSIONER FEDORCHAK: I don't have any more  
16 questions.

17 ALJ DAWSON: Commissioner Christmann.

18 COMMISSIONER CHRISTMANN: No further questions.

19 ALJ DAWSON: There's no further questions, so  
20 you may step down.

21 Well, any further witnesses?

22 MR. SANDERSON: No. At this time, Your Honor,  
23 Otter Tail has no further witnesses and we'd rest our  
24 case.

25 ALJ DAWSON: Is there any other information that

1 needs to come before the Commission at this time?

2 MS. RADERMACHER: No, Your Honor, just for the  
3 -- and maybe you're going to do that as housekeeping at  
4 the end, just the scheduling of how this is going to  
5 play out.

6 ALJ DAWSON: Yeah, I sure will. I'll do that  
7 after the commissioners have any final words.

8 Anybody from the public first?

9 I don't see anyone, so the commissioners have  
10 any words?

11 COMMISSIONER FEDORCHAK: I will just say first  
12 regrets for Commissioner Kroshus. He hung in there as  
13 long as he could, but he was just not feeling well and  
14 will catch the rest of this on the recording. So he  
15 asked me to give his regrets for having to slip out a  
16 little bit early. I think he only missed about an hour,  
17 though, so better than he expected.

18 And then I think we covered more than enough  
19 ground today, and often multiple times, and so I think  
20 we'll have plenty to get through, and hope to come to a  
21 decision as soon as we can, like always. So thank you.

22 ALJ DAWSON: Commissioner Christmann.

23 COMMISSIONER CHRISTMANN: Thank you, Your Honor.  
24 I have nothing else to add.

25 ALJ DAWSON: Okay.

1           COMMISSIONER CHRISTMANN: Except to thank  
2 everyone else too.

3           ALJ DAWSON: I think we agreed earlier that we  
4 would have briefs due in 14 days simultaneously followed  
5 by reply briefs in 7 days after that, and that would be  
6 21 days out on a Friday, and so that would also be the  
7 proposed findings of fact, conclusions of law and order  
8 deadline.

9           The parties in agreement?

10          MS. RADERMACHER: Your Honor, just for  
11 clarification, because I know timing varies, sometimes  
12 they want them at 5, but filing is usually by 11:59 p.m.  
13 I just want to -- I just want to clarify.

14          ALJ DAWSON: Do you have any preference,  
15 Mr. Johnson?

16          MR. JOHNSON: I don't think John's going to come  
17 in to file anything at midnight so sometime between 8  
18 and 5 would be the best timing.

19          ALJ DAWSON: Okay. 5 p.m. it is.

20          MS. RADERMACHER: Thank you, Your Honor.

21          ALJ DAWSON: Otherwise, John would have to come  
22 in.

23          MS. RADERMACHER: Well, it's a Friday at 5. Is  
24 he going to be anyway? I'm just --

25          MR. JOHNSON: He would do it if we tell him too.

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(Laughter)

MS. RADERMACHER: No. I just wanted clarification because, again, rules vary so...

ALJ DAWSON: I understand.

Any further matters that need to be brought before me or the Commission?

MR. SANDERSON: Nothing from Otter Tail.

MS. RADERMACHER: Nothing from Nodak Electric.

ALJ DAWSON: Then it is approximately 5:34 p.m. and it's April 16th, 2021, and the hearing for PU-20-356 is closed. And the record is left open for the filings of briefs.

MS. RADERMACHER: Thank you.

ALJ DAWSON: This hearing is closed.

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Dated this date of September 8, 2021.

\_\_\_\_\_  
LISA A. HULM, CET-783

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