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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

Commissioners: Julie Fedorchak
Randy Christmann
Brian Kroshus

Nodak Electric Cooperative, Inc.:

Kimberly J. Radermacher
Radermacher Law Firm, P.C.
506 Main Street
Edgeley, ND 58433

Otter Tail Power Company:

Paul R. Sanderson
Evenson Sanderson, PC
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Bismarck, ND 58501

Public Service Commission:

Brian L. Johnson
Legal Counsel
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

Intervened on behalf of Drayton, witness for OTP:

Mayor Charles Olson

Administrative Law Judge Timothy J. Dawson
Office of Administrative Hearings
2911 North 14th Street, Ste 303
Bismarck, ND 58503

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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