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1 to your testimony, and I'll start with the franchise
2 portion of your testimony. Am I correct in
3 understanding Nodak Electric Cooperative does not
4 possess a current franchise to serve within the city of
5 Drayton?

6 A. That's correct.

7 Q. Okay. And at no time has the City of Drayton
8 ever granted Nodak a franchise to serve within the city
9 limits?

10 A. That's correct.

11 Q. Okay. You were also aware that on April 13,
12 2020, the City of Drayton passed a resolution
13 specifically authorizing Otter Tail Power to serve the
14 Love's Truck Stop in McFarland's Addition?

15 A. I've been made aware of that, yes.

16 Q. Okay. Now, let's talk about where you kind of
17 left off with the interference with existing services.
18 And you agree that Nodak Electric Cooperative does not
19 currently serve any customers within McFarland's
20 Addition; correct?

21 A. Correct.

22 Q. And just, again, so the record is clear, you're
23 aware McFarland's Addition is located within the city
24 limits of the city of Drayton; correct?

25 A. Correct.

1 Q. Okay. Now, you mentioned Nodak is an electric
2 cooperative; correct?

3 A. Yes.

4 Q. And electric cooperatives in North Dakota are
5 organized under NDCC Chapter 10-13; correct?

6 A. I assume so. I'm not a lawyer.

7 Q. And the very first provision of the electric
8 cooperative's act under North Dakota law provides
9 purposes of electric cooperatives. Are you aware of
10 that?

11 A. I don't know the -- the verbiage of the Century
12 Code, no.

13 Q. Well, let me ask you this. What is the purpose
14 of an electric cooperative under North Dakota law?

15 A. Under North Dakota law?

16 Q. Yes.

17 A. Again, I'm not an attorney and I don't know what
18 it says there. To me, our purpose is to provide
19 electric service to our members.

20 Q. Okay. And let's talk about your members. And
21 the law provides Section 10-13-01, under purposes of
22 electric cooperatives, that a cooperative may be
23 organized and operated as an electric cooperative for
24 the purposes of engaging in rural electrification by any
25 one or more of the following. And number one is

1 furnishing electric energy to persons in rural areas who
2 are not receiving central station service.

3 And are those the customers you were referring
4 to?

5 A. Yes.

6 Q. Okay. And let's just, to be clear, rural areas
7 who are not receiving central station service, you agree
8 that residents of the city of Drayton are receiving
9 central station service pursuant to a city franchise
10 with Otter Tail; correct?

11 A. Residents? Yes.

12 Q. Okay.

13 A. But there's also a member there that's not
14 getting central station service from Otter Tail or
15 pursuant to a franchise.

16 Q. And that's what you testified you discovered
17 late last night, that there may be a customer on the
18 north side of Highway 66 that you believe was annexed in
19 that you believe Nodak is providing service to?

20 A. Yes.

21 Q. You agree that McFarland's Addition is, and I
22 believe we indicated, would be within the city limits of
23 Drayton today?

24 A. Today, yes.

25 Q. Okay. And because of that, being in the city

1 limits, a customer would be entitled -- a customer
2 within the city limits would be entitled to receive
3 central station service from Otter Tail pursuant to the
4 franchise; correct?

5 A. That's a pretty general statement but --

6 Q. Fair. You talked about your customers or
7 members. How are members of electric cooperatives
8 defined under North Dakota law?

9 A. I'm -- you keep asking me about North Dakota
10 law. If you want to provide it for me so I can see it,
11 I could read it for you but --

12 MS. RADERMACHER: Your Honor, I'd kind of object
13 to this line of questioning. This is more -- I think
14 more appropriate for Mr. Sanderson to make this
15 argument. I think he can ask a question, is based on
16 the law saying, do they -- can they provide -- or
17 they're getting central station service. But to have
18 him testify as to what the law is, again, I think it's
19 more appropriate for argument and not for --

20 MR. SANDERSON: May I respond --

21 ALJ DAWSON: Mr. Sanderson.

22 MR. SANDERSON: -- to that, Your Honor? My
23 question to the president, CEO of Nodak was simply how
24 is members -- he testified to his members -- how is
25 members defined under North Dakota law. Certainly he

1 can testify whether or not he understands how it's
2 defined under North Dakota law.

3 ALJ DAWSON: Well, he's not an expert in North
4 Dakota law, obviously and so these questions don't seem
5 to be going anywhere. I would ask that you reframe your
6 questions and ask them within his knowledge, not as to
7 North Dakota law.

8 MR. SANDERSON: Certainly.

9 BY MR. SANDERSON:

10 Q. Mr. Einarson, one of the things you talked about
11 was the new line extension policy you have, Exhibit 7;
12 correct?

13 A. Correct.

14 Q. And Exhibit 7 indicates the cooperative -- your
15 new line extension policy provides:

16 "The cooperative will build all extensions
17 of facilities in the most direct and
18 inexpensive manner possible."

19 Correct?

20 A. Correct.

21 Q. And then it says:

22 "The customer requesting service will be
23 required to sign an agreement to pay a
24 minimum charge for a period of at least five
25 years from the date service is made

1 available."

2 That's the next provision; correct?

3 A. Correct.

4 Q. And has Love's Truck Stop requested service from
5 Nodak Electric Cooperative?

6 A. No, they have not.

7 Q. Is Love's Truck Stop a member of Nodak Electric
8 Cooperative?

9 A. No, they are not.

10 Q. Has Love's Truck Stop submitted any membership
11 application to Nodak Electric Cooperative?

12 A. No, they have not.

13 Q. Now, you were asked about the unreasonable
14 interference with existing services, and I want to be
15 clear how I understood your testimony. You agree that
16 Otter Tail's extension to serve Love's would not result
17 in any physical interference with any of Nodak's current
18 services or customers; correct?

19 A. Without -- without considering the safety
20 aspects that potentially could be in place, I would
21 agree with your statement.

22 Q. Okay. And the safety aspect that we heard Mr.
23 Breidenbach testify this morning are more hypotheticals
24 that, during construction, something could happen during
25 the construction that could interfere with. Is that

1 what you were referring to as to physical interference?

2 A. And again, I didn't say physical interference.
3 I said without respect to the safety aspects. If we put
4 these two lines in close proximity, there can be a
5 safety issue, as Steve alluded to. We go and mark our
6 line and somebody that's digging thinks that all the
7 lines are marked and they start digging because it's --
8 and so that's a safety aspect to a consumer or the
9 public. There's other safety aspects to our linemen as
10 well but -- so...

11 Q. And do you hold yourself out as a safety expert?

12 A. No.

13 Q. Okay. Are you aware of any provision of the
14 NESC that precludes Otter Tail's proposed extension to
15 Love's for any safety reasons?

16 A. No, I'm not.

17 Q. Okay. So really, and I believe your testimony
18 was the interference is more an economic interference
19 with your potential future business; correct?

20 A. That's what I said, yes.

21 Q. Okay. Would Otter Tail's proposed extension to
22 serve Love's interfere economically with any current
23 customer that Nodak has?

24 A. Well, in an aspect, yes, because all our members
25 share in our revenue. So if extending this line stops

1 us from getting the revenue that we would otherwise get,
2 it will impact all our members economically because we
3 all share in that.

4 Q. Okay. And you're talking about a hypothetical
5 that should you get the Love's Truck Stop. My question
6 was a little different, Mr. Einarson. My question was,
7 as you sit here today, if tomorrow they extend their
8 service, do any of your customers pay more or less than
9 they were paying today because of that extension?

10 A. Not until -- well, not today, but tomorrow they
11 do because we would not be getting the revenue off of
12 the -- off of the load.

13 Q. Okay. One of the things you've testified over
14 and over is that you built out your system to -- for
15 expansion. And when we look at Exhibit 2, that grain
16 bin, the farm with grain bins that -- where you're
17 proposing to run your service, that was a customer that
18 required three-phase service there; correct?

19 A. Correct.

20 Q. And you ran a three-phase service to serve that
21 customer?

22 A. Right.

23 Q. Okay. And that customer, whether three-phase --
24 whether Nodak runs an extension or not to Love's, it
25 still has three-phase service there; correct?

1 A. Yes.

2 Q. And whether Otter Tail runs their service over
3 to McFarland's to serve Love's, that customer is still
4 getting three-phase service; correct?

5 A. (No audible response.)

6 Q. And again, maybe you can also confirm. Your
7 next closest customer that has three-phase service is
8 approximately a mile north of that farm; correct?

9 A. On this line, yes.

10 Q. Okay. And in fact, on your Exhibit 5, you only
11 have three customers within a two-mile radius of Drayton
12 that receive three-phase service?

13 A. I believe that's correct.

14 Q. Okay. Now, you've testified that Nodak has made
15 investment in its plants and system to provide future
16 service; correct?

17 A. Correct.

18 Q. You would also agree that Otter Tail Power has
19 made investments in their plant and system to serve
20 customers located within the city of Drayton; correct?

21 A. (Indiscernible)

22 Q. Okay. And so if you serve this load within the
23 city of Drayton, Nodak would be interfering with the
24 investments that Otter Tail has made to serve customers
25 within the city, correct, economically?

1 A. No, I wouldn't think so because they're on the
2 other side of the interstate. We're right adjacent to
3 the property.

4 Q. You would agree they've designed their system to
5 serve all customers within the city limits; correct?

6 A. I can't speak to how they design their system,
7 but I would assume that they've provided for some
8 ability to expand, yes.

9 Q. Now, one of the things you testified that -- you
10 said the Territorial Integrity Act was put in place to
11 prevent situations like this. Was that your testimony?

12 A. In a roundabout way. I didn't say that exact
13 thing, but what I said is that the TIA was put in place
14 to stop wasteful duplication of infrastructure dollars
15 for situations just like this.

16 Q. Well, am I correct in my understanding, is your
17 understanding the Territorial Integrity Act precludes a
18 utility from going outside city limits to serve a load
19 without getting permission from the Commission?

20 A. Correct.

21 Q. Okay. And there's ten factors, including
22 revenue, line extension, cost, that go into that
23 determination; correct?

24 A. Correct.

25 Q. That's not what is occurring in this case. You

1 would agree with that?

2 A. I would agree that the Commission has limited it
3 to three points, yes.

4 Q. Well, the property in dispute in this case is
5 within the city limits?

6 A. Right.

7 Q. Okay. So this is not a situation where Otter
8 Tail Power is attempting to go outside of the city
9 limits, correct, to serve a customer?

10 A. Correct.

11 Q. Okay. Now, you also indicated that it's your
12 opinion there would be an unreasonable duplication of
13 services if Otter Tail serves Love's Truck Stop.

14 A. Correct.

15 Q. Okay. You agree Nodak has no three-phase
16 electric service to any customer in McFarland's
17 Addition?

18 A. We have no customers in McFarland Addition right
19 now.

20 Q. Okay.

21 A. Single-phase or three-phase.

22 Q. Certainly. And to serve a customer, you'd have
23 to run three-phase into McFarland's Addition; correct?

24 A. 350 feet.

25 Q. Yep. And to serve -- for Otter Tail to serve,

1 they need to run three-phase service into McFarland's
2 Addition at what you determined to be about three times
3 the distance?

4 A. Correct.

5 Q. Okay. Now, I want to talk to you a little bit
6 about your communications with the City. And I believe
7 you testified Mayor Charles Olson called you at some
8 point to discuss the issue of service for the Love's
9 Truck Stop; correct?

10 A. He did.

11 Q. Okay. And in your testimony, you said Mayor
12 Olson called you, telling you the City was going to
13 annex the property into city limits. Did Mr. Olson --
14 did Mayor Olson tell you that?

15 A. I don't believe Mayor Olson told me they were
16 going to annex it. He told me -- if I said that, I
17 misspoke. He called to tell me that Love's is building
18 this truck stop. He knew that there was a -- that Otter
19 Tail wanted to serve it, we want to serve it, there had
20 been letters written from our attorney to the city
21 attorney. He called to tell me that Love's wants Otter
22 Tail as their member -- or as their customer, and what
23 Love's wants is what we want.

24 Q. Okay. So the City of Drayton formally stated to
25 you they want Otter Tail to serve this property?

1 A. They did.

2 Q. Okay. Now, in addition, I believe you
3 referenced a meeting that Chris Waltz and Jeremy Rham
4 came to Grand Forks, two representatives of Otter Tail
5 came to Grand Forks to meet with you and discuss these
6 issues; correct?

7 A. Correct.

8 Q. Okay. And then after that, you said that you
9 received a call from -- that's when you received a call
10 from the mayor?

11 A. Yes.

12 Q. Okay. And then the mayor set up a meeting with
13 Nodak, with representatives of Otter Tail, and with
14 Steve Walters, the representative of Love's Truck Stop;
15 correct?

16 A. Otter Tail was not included in that
17 conversation.

18 Q. Okay. So you had a conversation without Otter
19 Tail being present with the mayor and Steve Walters?

20 A. Yes.

21 Q. Okay. After your initial meeting in Grand
22 Forks, did you meet on two more occasions with Chris
23 Waltz and Jeremy Rham to discuss these issues where the
24 City and Love's was also present?

25 A. We had two phone calls.

1 Q. Two more phone calls with Otter Tail, the City,
2 and a representative of Love's after your phone call
3 without Otter Tail? Is that your testimony?

4 A. So what I remember is that the mayor called me
5 to talk to me individually. He said, I'd like to talk
6 to -- I pointed out, I said I'd love to talk to the
7 folks from Love's, and he said, okay, I'll set it up.
8 So the next day we had a conference call between the
9 mayor, Steve Walters, and (indiscernible).

10 The only other phone call I remember offhand
11 here is one that Otter Tail set up between Otter Tail,
12 Love's, the mayor, and Nodak.

13 Q. Okay. So you recall one specific -- after your
14 phone call with just Love's and the City, you recall one
15 phone call with the City, Love's, Nodak, and Otter Tail?

16 A. Correct.

17 Q. Okay. Do you recall any in-person meetings, any
18 further in-person meetings, with representatives of
19 Otter Tail to discuss these issues?

20 A. I only recalled one time that -- that the two
21 guys from Otter Tail came down to Nodak to talk.

22 Q. Okay.

23 A. I don't remember in-person.

24 Q. During your telephone call with the mayor of the
25 city of Drayton and a representative of Love's Truck

1 Stop, did they ask Nodak not to challenge this load and
2 that they wanted Otter Tail to serve this customer?

3 A. Initially. And by the end of the phone call,
4 Mr. Walters asked me for -- for breakdowns of what the
5 monthly power cost would be. He then emailed me and --
6 we had discussed during that phone call the opportunity
7 to put an electric car charging in at the truck stop as
8 well. He emailed me and said that he had spoken with
9 Mr. Love and that perked his interest and could I send
10 him a Coles Notes or a CliffsNotes version of what could
11 potentially happen there. That all went to him -- went
12 to him the following day.

13 Q. Okay. What was your next communication with
14 Love Truck Stop after that group call?

15 A. I believe the next communication was the
16 four-way phone call that we had with Otter Tail and the
17 mayor and -- and Love's.

18 Q. Okay. I apologize. I had those -- okay. So
19 during -- and that's where I'm getting to. The four-way
20 phone call, during that phone call, did the mayor and
21 Love's ask Nodak not to challenge this load and that
22 they want Otter Tail to serve this customer?

23 A. It happened over a year ago. I believe so. The
24 actual words, I'm not sure if they said don't challenge
25 it. The mayor did say that he wanted Otter Tail to

1 serve it because that's what Love's wanted. Love's said
2 they wanted Otter Tail to serve it because they feel it
3 would be less expensive.

4 And at the end of that phone call, I sent an
5 email out to everybody thanking them and saying I
6 appreciate the conversation. Unfortunately, it seems
7 that we're not able to come together here so we might
8 need the Public Service Commission to weigh in and, at
9 the end of the day, what's most important is that Love's
10 is going to locate in Drayton and it's good for
11 everybody.

12 Q. Okay. So that call that you just referenced the
13 details of occurred after you had sent Love's your cost
14 estimate -- cost projections for this facility?

15 A. Yes.

16 Q. Okay. And am I correct -- let me ask you this.
17 What was the time frame, just roughly, of that call?

18 A. The duration or what time of year?

19 Q. Just month, you know, month and year of that
20 call. And I thought you said June 2019, but I just want
21 to confirm.

22 A. June 4th, I have here, but I don't remember --
23 that would have been 2020. June 4th of 2020.

24 Q. Okay. And so that call was June 4 of 2020. And
25 by that time, the city had already passed a resolution

1 in April of 2020, indicating that it had selected Otter
2 Tail to serve that load?

3 A. Yes.

4 Q. Who initiated this June 4th, 2020, call?

5 A. Christopher Waltz.

6 Q. Okay. And you said you don't recall the
7 specific language used, but was the general
8 understanding, during that call, that the city and
9 Love's were asking Nodak not to challenge this load?

10 A. I wouldn't characterize it that way. I would
11 say that the City was telling us that this is how they
12 felt. I would say that Love's was telling us that they
13 believe that they should be able to choose their power
14 provider. I wouldn't phrase it specifically in the way
15 you did.

16 Q. Well, when you say Love's was telling you they
17 should get to choose their power provider, that's your
18 testimony?

19 A. That's the tenor of the conversation, yes.

20 Q. And in fact, Love's told you during that
21 conversation who they chose to provide power, Otter Tail
22 Power; correct?

23 A. They told us their preference, yes.

24 Q. Okay. Now, one of the things you introduced in
25 this case was Exhibit 8, and that was a document that

1 had controlled and uncontrolled rates; correct?

2 A. Right.

3 Q. Now, you said you did not provide -- I believe
4 your testimony was you did not provide controlled rate
5 projections to Love's at any point in time; correct?

6 A. No, I didn't say that.

7 Q. Okay. Did you provide controlled rates to --

8 A. What I said was that I didn't -- this document
9 that -- whatever it is, No. 8, I did not send that to
10 Love's. I did send them rate projections for both
11 controlled and uncontrolled loads.

12 Q. And when you say controlled and uncontrolled, I
13 want to make sure I understand it. And typically, is
14 that sometimes referred to as interruptible loads?

15 A. Yes. Yes. It means using load management
16 versus firm power without any load management.

17 Q. Okay. At any point in time, did Love's ever
18 indicate to Nodak that they wanted interruptible service
19 for their 24-hour-day, 365-day-a-year truck stop?

20 A. No.

21 Q. Okay. Now, I want to spend some time talking to
22 you about Exhibit 6, and that is the area service
23 agreement. Do you have that document in front of you?

24 A. Yes, I do.

25 Q. Okay. And just to be clear, this document was

1 created in March of 1968. I didn't -- or I don't
2 recall, but pretty safe, you were not working for Otter
3 Tail in March of 1968?

4 A. I was one year old.

5 Q. Okay. And when did you -- when did you first
6 become employed with Nodak?

7 A. Would have been December 27th, 2012.

8 Q. Okay. Is it safe -- is it fair to say, with
9 respect to this document, you have no personal knowledge
10 as to the negotiations or what was going on to form this
11 document with Nodak?

12 A. Obviously not.

13 Q. Okay. And your knowledge of this document is
14 simply what you've read and interpreted from these
15 provisions; correct?

16 A. Right.

17 Q. Okay. Let's start at page 2 of the service area
18 agreement. And if we look at paragraph 1, it says:
19 Both parties agree to the following general conditions,
20 and they shall be used as a guide.

21 A. I might be looking at the wrong thing. Where
22 are you at? Page 2?

23 Q. Page 26 Exhibit 6, and under the service area
24 agreement, and I'm specifically looking at paragraph 1.

25 A. Where it begins "In an earnest"?

1 Q. Yeah. And I kind of skipped down to the third
2 from the bottom line -- or where it kind of says:

3 "Both parties agree to the following general
4 conditions, and further agree that these
5 conditions as set forth, shall be used as a
6 guide."

7 A. Uh-huh.

8 Q. That's what the document says?

9 A. That's what it says.

10 Q. Okay. And if we go to paragraph 2, it says:

11 "The company shall serve all territory
12 located within and adjacent to urban areas
13 served by the company."

14 And again, for purposes of this, your
15 understanding is the company is Otter Tail Power?

16 A. Right.

17 Q. Okay. And you talked about the difference
18 between the 1968 service agreement and the 1958 service
19 agreement was a change to the verbiage regarding
20 annexation. Was that your testimony?

21 A. Yes.

22 Q. Okay. Well, if we look at paragraph 2 and that
23 sentence, it says:

24 "We hereby agree that the company shall
25 serve all territory located within and

1 adjacent to the urban area served by the
2 company as outlined on the attached maps,
3 the intent being to avoid any transfer of
4 customers when such areas may be annexed by
5 the municipalities."

6 Correct?

7 A. Correct.

8 Q. That's the whole intent of that purpose pursuant
9 to the reading of that paragraph; correct?

10 A. The whole intent of?

11 Q. That's the -- the listed intent in paragraph 2.

12 A. So is the intent of paragraph 2 to say that any
13 transfer -- we're trying to avoid transfer of customers
14 when annexation happens?

15 Q. Yes.

16 A. Okay. That's what that line says.

17 Q. Okay. And in this situation that we're talking
18 about in this case, Nodak had no customers in the area
19 of the annexation; correct?

20 A. Correct.

21 Q. And we're not in a situation where we're dealing
22 with Otter Tail having to compensate Nodak for its lines
23 -- service lines or facilities that were in annexed
24 areas; correct?

25 A. Correct.

1 Q. Okay. And if we go to paragraph 3, that
2 provides that electric service outside the city limits
3 will be served by Nodak?

4 A. Are you asking me?

5 Q. Yes. Is that correct?

6 A. If number 3 says that we will serve outside the
7 -- it says outside the adjacent area outlined by the
8 maps.

9 Q. Okay. Well, let's talk about the maps, and
10 let's go to the next page and look at paragraph 7. And
11 paragraph 7 of this agreement says:

12 "Upon mutual agreement, any maps, prints,
13 revisions, or sketches used to further
14 describe territory changes shall become a
15 part of this agreement. These consist of as
16 follows."

17 And there's a quotation mark, and it says:

18 "Map description, date made part of this
19 agreement, company initials, cooperative
20 initials."

21 Do you see those provisions?

22 A. I do.

23 Q. And at least the signed copy that I have of
24 Nodak Exhibit 6 does not reference any maps that are
25 incorporated as part of the 1968 agreement.

1 A. They're not detailed there, no, but it does --
2 in the first -- first sentence in paragraph 2 on the
3 previous page, it says, "as outlined on the attached
4 maps."

5 Q. Yes, it does.

6 A. So there's 50 of them. So they're not listed
7 here. They're attached and -- and signed as per this
8 one.

9 Q. Okay. And your testimony is there were 50 maps
10 attached to this 1968 agreement but they're not
11 referenced in the agreement anywhere?

12 A. I don't know if it's 50. I just said 50 -- it's
13 a bunch of them. And it -- I do think it's referenced
14 in the agreement where it says attached maps.

15 Q. Okay. And it says, upon mutual agreement, any
16 maps shall become part of this agreement. These consist
17 of as follows, and there's no description of what maps
18 are attached. And to be fair, there's no description in
19 the service -- 1968 service area agreement as to what
20 maps are attached; correct?

21 A. If that's what you're getting at, I'll give you
22 that, that in these two pages, it doesn't identify
23 verbatim which maps are attached, but it's the maps
24 around the service area agreements where we butt up
25 against each other.

1 Q. Okay. And that's your interpretation?

2 A. Right.

3 Q. But you have -- you were not present in 1968 to
4 know what the intent of the drafting parties were;
5 correct?

6 A. Correct.

7 Q. Okay. And the map that you've attached is dated
8 1961; correct?

9 A. Right.

10 Q. But, again, that 1961 map is not referenced in
11 paragraph 7?

12 A. Referenced in paragraph 2.

13 Q. Well, it says attached maps, but it doesn't
14 specifically state the map 64 of the city of Drayton;
15 correct?

16 A. Correct.

17 Q. Okay. Now, I want to move to paragraph 8 of the
18 agreement. It also says:

19 It is agreeable to both parties that,
20 sometime within the month of January or
21 February, the board of directors of the
22 cooperative and managers and people
23 designated by Otter Tail Power Company will
24 get together for a meeting to discuss any
25 problems that may have occurred the last

1 year and talk about any further agreements
2 that may take place.

3 Do you see that provision?

4 A. I do.

5 Q. Now, the next page of the service area agreement
6 you attached, the 1968, is -- appears to be meeting
7 minutes from a July 28th, 1972, annual area service
8 agreement meeting. Do you see that?

9 A. Yes.

10 Q. So we know at least after 1968 Nodak and Otter
11 Tail, pursuant to the provisions that they would meet
12 yearly in January or February, met in 1972. Is that
13 your understanding or interpretation?

14 A. Yes.

15 Q. Okay. When was the next annual area service
16 agreement meeting between Nodak and Otter Tail following
17 the July 1972 meeting?

18 A. I don't know. It appears as though the boards
19 were meeting back in the early '70s and there was no
20 changes to the maps so they quit taking the time to get
21 together to do that. The -- in the minutes that we
22 have, it just refers to the wonderful working
23 relationship that we have with Otter Tail and there
24 wasn't anything that said this is why we're not meeting
25 anymore.

1 Q. When was --

2 A. I assume it's because -- assume it's because
3 there was no changes to those maps.

4 Q. Yep.

5 A. The changes have been very few and far between
6 over the years.

7 Q. Sorry, and I didn't mean to interrupt you.

8 When was the last annual area service agreement
9 meeting between Otter Tail and Nodak?

10 A. I don't know.

11 Q. Can you state whether the parties have complied
12 with paragraph 8 of the 1968 agreement and held a
13 meeting in the past 49 years?

14 A. In the past 49 years? I do not -- I don't know
15 when they met other than apparently in 1972.

16 Q. Okay. When was the last time Otter Tail and
17 Nodak discussed this service area agreement prior to
18 this case?

19 A. I had some conversations with Jeremy's
20 predecessor regarding the Devils Lake area. That would
21 have been 2013 -- '14, '13.

22 Q. Now, one of the things you testified to earlier
23 today is that the Commission approved a service area
24 agreement between Nodak and Xcel by Thompson, North
25 Dakota.

1 A. I said they approved a change to our service
2 area agreement.

3 Q. When was that done?

4 A. A couple years ago.

5 Q. Okay. Are you aware that in 2005 the North
6 Dakota legislature enacted a section in the Electric
7 Utilities Franchise chapter, Section 49-03-06, entitled
8 "Service Area Agreements Among Electric Providers"?

9 A. Yes.

10 Q. Okay. And were you aware that that law
11 governing service area agreements requires that any such
12 service agreement shall be promptly filed with the
13 Commission?

14 A. My understanding is that -- is that is for
15 service area agreements from that date forward and that
16 it didn't retroactively affect service area agreements
17 that were already in place.

18 Q. And where did your understanding of that come
19 about?

20 A. From conversation with my attorneys.

21 Q. Okay. Am I correct that Nodak has never filed
22 the 1968 service area agreement with the Commission?

23 A. You're correct.

24 Q. Am I also correct in that Nodak has never filed
25 the service area map for the city of Drayton for -- with

1 the Commission?

2 A. Correct.

3 Q. And am I also correct that Nodak has never
4 received approval from the Commission for the 1968
5 service area agreement or the Drayton map?

6 A. Not to my knowledge.

7 Q. Okay. One of the provisions of the 2005 service
8 area agreement statute says that governing boards of a
9 city may require approval or disapproval of a service
10 area agreement between electric providers to the extent
11 the agreement encompasses service locations within the
12 city. Were you aware of that provision?

13 A. Yep.

14 Q. Okay. Was Nodak -- or excuse me. Was the City
15 of Drayton party to the Nodak and Otter Tail 1968
16 service area agreement?

17 A. I very much doubt it.

18 Q. Okay. Has Nodak ever presented the agreement or
19 the maps to the City of Drayton and requested that they
20 approve that service area agreement?

21 A. I don't think it's a requirement.

22 Q. Okay. And my question was a little bit
23 different. Has Nodak --

24 A. No, we have not.

25 Q. Okay. But it's your position that the city of

1 Drayton, who is not party to that 1968 service area
2 agreement, should be bound by the terms of that
3 agreement?

4 A. Yes.

5 Q. Okay. Now, you were asked about the shared
6 poles and that you lease space on Otter Tail's shared
7 poles. That's your testimony?

8 A. We have an underbuild on -- yes.

9 Q. What is the basis for that knowledge that you
10 lease -- that you lease space on that pole from Otter
11 Tail?

12 A. Conversations with my engineers.

13 Q. Okay. Have you ever viewed any contract or
14 lease agreement between Otter Tail and Nodak for that?

15 A. I have not.

16 Q. Okay. What amount does Nodak pay Otter Tail to
17 lease space on its poles?

18 A. I have no idea.

19 Q. When does Nodak make annual payments for the
20 lease of space on Otter Tail's poles?

21 A. I have no idea.

22 Q. When was the last time Nodak ever made a payment
23 to Otter Tail --

24 MS. RADERMACHER: Objection, Your Honor. This
25 is asked and answered. Same line of questioning. He

1 said he has no idea as to when -- what the payments were
2 made. I believe we're on the same line of questioning.
3 He indicated he has no idea.

4 MR. SANDERSON: And my question was different
5 than that, Judge.

6 ALJ DAWSON: Your question is different but
7 getting redundant.

8 MR. SANDERSON: Okay.

9 ALJ DAWSON: So move along.

10 BY MR. SANDERSON:

11 Q. Are you aware -- maybe we'll just put it this
12 way. Are you aware of Nodak ever making a payment to
13 Otter Tail to lease space on the poles?

14 A. Have I seen a check? No. Have I been told that
15 we lease space? Yes. I -- I have not seen a contract.
16 I assume that there's some sort of an agreement in
17 place, but I don't know that --

18 Q. Okay.

19 A. -- firsthand.

20 Q. When was the last time a service area agreement
21 map was signed between Nodak and Otter Tail Power for
22 service around the city of Drayton?

23 A. To my knowledge, 1961.

24 MR. SANDERSON: I have no further questions.
25 Thank you.

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ALJ DAWSON: Mr. Johnson.

CROSS EXAMINATION

BY MR. JOHNSON:

Q. So the only reason that the service area agreement hasn't been updated with the Commission is because you just believe it's grandfathered in?

A. Correct.

Q. How long ago was that conversation had? Was that right after the law was passed or has it been revisited since?

A. I'm sorry, I can't hear you.

Q. When was that conversation --

ALJ DAWSON: Is your mic on?

MR. JOHNSON: It is.

Q. When that conversation was had, was it right after the law change or was it later? Has it happened since then?

A. I've had several conversations with our corporate attorneys since being at Nodak. So I became CEO at Nodak after the law was passed so it would be after that.

Q. Okay. And Otter Tail's never approached Nodak about revisiting that and updating it and filing it with the Commission either?

A. Not filing with the Commission, no.

1 Q. Have they approached you about renegotiating the
2 service agreement?

3 A. I spent the better part of a year trying to
4 renegotiate a service area agreement around Devils Lake
5 with Jeremy's predecessor. So yeah, we have had
6 conversations about renegotiating maps around service --
7 around these -- this exact agreement, yes.

8 Q. And that's one of the areas that's covered by
9 this agreement as well?

10 A. Yes.

11 Q. Besides Devils Lake, has there been any others
12 that you guys have discussed renegotiating?

13 A. Not that I'm aware of.

14 MR. JOHNSON: Okay. No further questions.

15 ALJ DAWSON: Commissioner Kroshus.

16 COMMISSIONER KROSHUS: All right. Well, I just
17 have a few questions.

18 ALJ DAWSON: Stop for just a second.

19 COMMISSIONER KROSHUS: Sure.

20 ALJ DAWSON: We're going to take a break, I
21 think, right now instead of going to questioning.

22 UNIDENTIFIED SPEAKER: (Inaudible).

23 ALJ DAWSON: We'll take a break right now for a
24 luncheon recess and come back with questioning by you,
25 Commissioner Kroshus.

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And how long do you need for lunch today? 45?

UNIDENTIFIED SPEAKER: (Inaudible).

ALJ DAWSON: Okay. Let's make every effort to
be back here in a half hour. I'll be back here in a
half hour.

(Recess)

1 ALJ DAWSON: On the record. And it is 1:40 p.m.
2 And we are at the portion of the hearing where
3 Commissioner Kroshus is about ready to ask some
4 questions.

5 Commissioner Kroshus.

6 COMMISSIONER KROSHUS: All right. Thank you,
7 Your Honor. I've been waiting patiently for the last
8 30 minutes so...

9 I actually don't have that many questions
10 because I think the questioning that you've gone through
11 already has been extremely thorough and checked off
12 quite a few of the ones I had, but just one that I -- a
13 few that I do have.

14 So you have the bin site that's been referred
15 to, the one that apparently has three-phase service that
16 you would extend service into the McFarland Addition if
17 it was determined that you should serve that customer.
18 When that went in, was there any dispute at the time
19 when that infrastructure went in, that three-phase
20 service to the grain bins, did Otter Tail say, wait a
21 second, we want to look at that as well?

22 THE WITNESS: Not that I'm aware of. We had a
23 smaller single-phase load there and extended it to
24 three-phase, I believe, in 2009. I may -- we may have
25 made it three-phase before that, but we upgraded it

1 in 2009. I don't believe there was any objection from
2 Otter Tail.

3 COMMISSIONER KROSHUS: Okay. And I'm assuming,
4 but were you aware -- I'll ask anyway -- that the City
5 of Drayton, did they express any interest in that grain
6 bin site at the time in terms of talking about annexing
7 that area, what is now known as the McFarland Addition,
8 into the city of Drayton?

9 THE WITNESS: Again, that would have happened
10 before I was working for Nodak, but I've not seen
11 anything or read anything to indicate anything along
12 those lines.

13 COMMISSIONER KROSHUS: So from a chronological
14 standpoint, and not to start getting into my thought
15 process too much, but -- well, going back to exhibit --
16 it would be the amended service area -- or no -- the
17 franchise agreement between the City of Drayton and
18 Otter Tail Power. The McFarland Addition was added in
19 August of 2019, I believe it was. Well, actually, I
20 take that back. August 19, 2020, a new subdivision of
21 the city of Drayton was plotted and annexed into --
22 right, into the city known as McFarland's Addition.

23 The Love's Truck Stop, was that already being
24 discussed prior to that? You'd had discussions with
25 them prior to August 19th or after?

1 THE WITNESS: Considerably before that. I think
2 our first contact with -- with the folks from Love's was
3 on February 23rd, 2019.

4 COMMISSIONER KROSHUS: Okay. So it's probably
5 -- it's attractive both from a city standpoint to have a
6 Love's Truck Stop on your tax base.

7 THE WITNESS: Absolutely.

8 COMMISSIONER KROSHUS: It's attractive from a
9 load standpoint if you're a utility.

10 So the interest in what's now known as
11 McFarland's Addition, I think it's -- would it be fair
12 to say -- and I know this is somewhat speculative
13 because you're not the mayor and others, but it just
14 seems -- would you agree that it seems like the interest
15 really wasn't generated on that piece of ground until
16 after Love's announced they were coming in?

17 THE WITNESS: I would think it's pretty obvious
18 that the interest is after -- it wasn't in the bare
19 ground. It was in the actual annexation of the property
20 because of what was going to happen on that ground.

21 COMMISSIONER KROSHUS: Okay. And then there
22 were some questions on the service area agreement that
23 Nodak has with Otter Tail, and I think you expressed
24 that you -- outside of Devils Lake reworking that
25 agreement to some extent with Otter Tail, I know you had

1 mentioned Xcel and the city of Thompson, I believe, but
2 had you reached out to Otter Tail in any other areas to
3 review the service area agreement that you had in place?

4 THE WITNESS: It comes up every now and then
5 when there's going to be a new grain elevator on the
6 outskirts of a small town, we discuss it and those kind
7 of things, but we haven't reached out to have a
8 conversation about, should we redo this or revisit it
9 for any other reasons.

10 COMMISSIONER KROSHUS: Okay. And then in
11 fairness, has Otter Tail reached out to you?

12 THE WITNESS: No.

13 COMMISSIONER KROSHUS: Okay. So it's a fair
14 fight, if you will, in terms of -- and then it goes back
15 to the, is it 1968 when you were one?

16 THE WITNESS: Yep.

17 COMMISSIONER KROSHUS: So I wasn't one. I was
18 -- I wasn't minus one. I was three or four.

19 And then as I mentioned earlier, I don't -- no,
20 I don't think I have any other questions at this point
21 in time. Rather than scanning my notes, I'll defer to
22 the other commissioners and I reserve the right to come
23 back.

24 ALJ DAWSON: Commissioner Fedorchak.

25 COMMISSIONER FEDORCHAK: All right. Thank you,

1 Judge.

2 So along the lines -- let's see. Let's go back
3 to the agreement, the service agreement. So you said
4 that you didn't file it with the Commission because of a
5 belief that it was grandfathered in. Where does that
6 belief come from? Is that established in caselaw or
7 something?

8 THE WITNESS: So I don't recall the date that
9 the -- that the service area agreement law was put into
10 place, but it predated me being at Nodak by quite some
11 time.

12 COMMISSIONER FEDORCHAK: 2005'ish, I think?

13 THE WITNESS: I think that's about right.

14 COMMISSIONER FEDORCHAK: All right.

15 THE WITNESS: And I came to Nodak in 2012.

16 COMMISSIONER FEDORCHAK: Okay.

17 THE WITNESS: So in the conversations with our
18 attorneys as these things come up here and there, the
19 conversation was that they don't -- they didn't believe
20 that the legislative intent was to void all existing
21 agreements but, rather, to allow for new agreements to
22 be put in place. I don't know if that's caselaw or
23 that's just conversation with our corporate lawyers.

24 COMMISSIONER FEDORCHAK: All right. Is there a
25 downside to filing it? I mean, is it just extra work?

1 What would be the reason not to just file it and go
2 through that step?

3 THE WITNESS: I -- I really don't know. I
4 suppose it just takes an effort and --

5 COMMISSIONER FEDORCHAK: (Indiscernible)

6 THE WITNESS: I think there's some -- some
7 interest in the investor-owned utility in changing some
8 of the agreements, and I'm not sure that that is shared
9 by the -- the electric cooperative side, in that, for
10 large loads and things like that, that are not
11 contemplated in these agreements. So I think in some
12 respects it's maybe not a -- I'm assuming it's not being
13 discussed because we're not going to get anywhere if we
14 start butting heads on that issue.

15 COMMISSIONER FEDORCHAK: Sure. And have you
16 ever had any interaction -- because it sounds like
17 you've talked with a number -- talked about the service
18 area agreements with Otter Tail in a couple locations.
19 Was there ever any suggestions in those communications
20 with them that the agreement wasn't valid because it
21 hadn't been -- like previously to now, because you
22 hadn't brought it to the Commission and we hadn't, like,
23 endorsed it or signed off on it or whatever, that it
24 wasn't valid when you were negotiating in, I think is it
25 Devils Lake?

1 THE WITNESS: Devils Lake.

2 COMMISSIONER FEDORCHAK: Was that ever part of
3 the discussion with them then?

4 THE WITNESS: Not that it wasn't valid but,
5 rather, that the lines that were drawn didn't make any
6 sense, that we probably should re-look at it because of
7 how they were laid out. And the city of Devils Lake
8 passed a new ordinance requiring franchise agreements so
9 we -- we started down that path.

10 COMMISSIONER FEDORCHAK: Okay. And then that
11 didn't lead to any other conversations about, well, we
12 should re-look at this in these other places?

13 THE WITNESS: No. My understanding is that the
14 conversation between the investor-owned utilities and
15 the rural electrics in the state has kind of come to a
16 halt because of a -- because of a disagreement on how
17 you would incorporate large loads into a new agreement.

18 COMMISSIONER FEDORCHAK: Okay. Okay. Now I
19 want to talk a little bit about the annexation process.
20 Well, let's talk about the franchise agreement. So when
21 franchise agreements are being negotiated between
22 whoever, the city and whatever party is negotiating it,
23 what role do the service agreements play in that?

24 THE WITNESS: Well, typically, a franchise
25 agreement with a city is a non-exclusive agreement. And

1 I believe, by statute, they're supposed to be
2 non-exclusive. And so what happens is that if there's
3 more than one utility serving the same city, both of
4 them with franchise agreements, their franchise
5 agreements outline what the service territories are. So
6 those typically would be an agreed-upon area between the
7 two utilities.

8 COMMISSIONER FEDORCHAK: Okay. But what if,
9 like in this case, there's only one franchise agreement
10 and you're looking at territory, some of which is under
11 consideration by a service agreement, what role does
12 that service agreement play in them being able to set
13 boundaries in a franchise agreement?

14 THE WITNESS: Well, I think the service
15 agreement binds the utility. So I think there's a
16 contractual arrangement between the two utilities that
17 would bind Otter Tail to only serve in this area that's
18 outlined by that service area agreement. The franchise,
19 I have to sign the franchise agreement if I'm in Grand
20 Forks so I have to agree to what it says in there. So
21 they're agreeing to do something that's outside what
22 they have in a different contract.

23 COMMISSIONER FEDORCHAK: So the franchise
24 agreement in this case came after the annexation of that
25 property, the franchise agreement for this property in

1 question -- what's the name of the subdivision?

2 McFarland --

3 THE WITNESS: McFarland Addition?

4 COMMISSIONER FEDORCHAK: Yeah. Did this
5 franchise agreement that Otter Tail Power received to
6 serve there come after that property had been annexed
7 into the city so it was no longer part of the service
8 area agreement?

9 THE WITNESS: The franchise agreement that Otter
10 Tail has was issued back in, was it 2011 or something
11 like that? And I don't know if an ordinance was -- if
12 that ordinance was changed at the same time as the
13 annexation. But the franchise agreement is in the form
14 of an ordinance. I don't know if that ordinance was
15 changed to outline a new map. I don't think so.

16 COMMISSIONER FEDORCHAK: So then when property
17 is annexed into the city, do you have a role to play at
18 that -- in that process at all? Or can you? Do you
19 have a voice?

20 THE WITNESS: As a non-owner in the -- to the
21 property, typically, the property owners would be the
22 ones that would have the larger voice. A city would
23 have a vested interest in the -- in the services being
24 provided in that area. So I would think that if -- I
25 would think they would want your voice. I would think

1 they would want some input from the utilities that are
2 involved.

3 COMMISSIONER FEDORCHAK: But there isn't a
4 formal role?

5 THE WITNESS: No.

6 COMMISSIONER FEDORCHAK: Were you consulted when
7 this property was annexed into the city?

8 THE WITNESS: No.

9 COMMISSIONER FEDORCHAK: Did you know it was
10 happening? Like could you have inserted yourself and
11 objected or provide public input? I don't know where
12 this happens, if it's at public meetings or city council
13 meetings or how that happens, but could you have been
14 involved?

15 THE WITNESS: It happens as an ordinance. I
16 don't know if not being a citizen of the city and not
17 being a property owner, if -- if that voice makes much
18 difference at a city council meeting. The annexation
19 happened -- or we were told that the annexation was
20 underway when it first began.

21 COMMISSIONER FEDORCHAK: Okay. And in your --
22 in your opinion, what prompted that annexation? What
23 was the driver?

24 THE WITNESS: The location of Love's Truck Stop.

25 COMMISSIONER FEDORCHAK: Okay.

1 THE WITNESS: So that the city could get
2 property taxes and, potentially, utility sales through
3 water and sewer.

4 COMMISSIONER FEDORCHAK: Okay. What's your
5 opinion of the role of the service area agreements, the
6 TIA, etcetera, in helping to provide guidance in this
7 type of a situation where you got property that was
8 annexed that was part of a service agreement, now it's
9 annexed into the city, and now the -- basically, the
10 city is saying -- or the company is saying the city's
11 rights prevail here over the service area agreement?
12 What's your guys' interpretation of the TIA in that
13 regard?

14 THE WITNESS: Well, I'm no legal scholar, but
15 from my perspective, I think that the TIA was put in
16 place for -- to give guidance so that their -- so that
17 the three of you protect the -- the ratepayers for the
18 investor-owned utilities. And the way that you protect
19 them is by ensuring that the investor-owned utility is
20 not wasting their money or, you know, providing service
21 where it's not necessary. So I think you have a voice
22 in that and have an ability to weigh in. I think that's
23 why the Territorial Integrity Act was put in place. I
24 understand that it makes it different when there's city
25 involved as well, but the crux behind the whole thing

1 was because of that.

2 COMMISSIONER FEDORCHAK: I want to talk a little
3 bit about -- you've mentioned the -- let's see, where is
4 that question? -- your investment in the three-phase
5 near that location. You've alluded to a number of times
6 that it's a sizeable investment and it's -- your company
7 did that in order to serve customers like this that
8 might come to that area. Can you quantify that
9 investment?

10 THE WITNESS: Oof. In essence, it's \$168
11 million in -- in plant and our service territory because
12 it -- it is -- it's not part and parcel, just this one
13 line. There's, you know, everything from the substation
14 all the way to the end user's meter.

15 But the -- you know, the explanation I used
16 before about if you're going to buy a lot and you're not
17 expecting that there is a service line into the lot but
18 on the edge of the property; right? When we're going to
19 put a new development in the south end of Grand Forks
20 and one house is going to get built, you're not going to
21 bring in a line small enough to serve one home. You're
22 going to bring in a line large enough to -- to serve the
23 entire area based on your understanding of what's going
24 to be built there, or what potentially might be built
25 there.

1 And so that's kind of what this is -- what I'm
2 alluding to the other -- in this area here, that, you
3 know, you wouldn't bring in a conductor size big enough
4 to just serve that one customer.

5 COMMISSIONER FEDORCHAK: So you guys brought in
6 that three-phase service in, did you say 2009, to that
7 location at the grain bins?

8 THE WITNESS: I said I know that it was upgraded
9 in 2009. I don't know if it was three-phase before that
10 or not. I'd have to look.

11 COMMISSIONER FEDORCHAK: Okay. But the most
12 recent upgrades was 2009?

13 THE WITNESS: Correct.

14 COMMISSIONER FEDORCHAK: And you weren't there
15 then, but there's not -- you don't have a lot of
16 customers in that area. Why did you make that size of
17 an investment at that location?

18 THE WITNESS: Well, it would be based on the
19 fact that that -- that customers in that area wanted
20 three-phase power. I don't know if it was that one
21 right there or if it was the one that's a mile north of
22 there or the other one. We've got -- Crystal Sugar is
23 in the area. They've got three-phase power as well. So
24 I can't speak to how that all happened. I was not
25 there.

1 COMMISSIONER FEDORCHAK: Who are you serving
2 with that three-phase power now? Just that -- the grain
3 bins?

4 THE WITNESS: No. It continues on around the
5 grain bins and goes north.

6 COMMISSIONER FEDORCHAK: Okay. Because there's
7 another three-phase north of there. Looks like the next
8 section up or two. I can't tell. Maybe a couple miles
9 north?

10 THE WITNESS: Right.

11 Is that the same line Crystal is on?

12 ALJ DAWSON: He can't answer.

13 THE WITNESS: Yeah, sorry. I figured that would
14 be the case.

15 COMMISSIONER FEDORCHAK: I'm looking at Nodak 5.

16 THE WITNESS: Right. Nodak 5. So there's --
17 the three-phase customer right there, there's one that's
18 -- looks like it's a mile north that's on that same
19 line. And then we've got one across the interstate. I
20 don't know if that is tied in or not. I don't have the
21 distribution map on my -- at my disposal.

22 COMMISSIONER FEDORCHAK: Okay. Has there been
23 any discussions of you selling your three-phase power,
24 your investments there, your infrastructure, to Otter
25 Tail --

1 THE WITNESS: No.

2 COMMISSIONER FEDORCHAK: -- to serve that
3 customer?

4 THE WITNESS: No.

5 COMMISSIONER FEDORCHAK: Okay. One more thing
6 about the franchises. How come you didn't pursue a
7 franchise with the City of Drayton?

8 THE WITNESS: We did pursue it insofar as to
9 tell them that if you'd like us to sign a franchise
10 agreement, we'd be happy to do that. So we didn't
11 formally go out and say, hey, can we have a franchise
12 agreement? I don't believe there's an ordinance
13 requiring a franchise agreement. So we phrased it the
14 other way, where if you want us to sign one, we'll sign
15 one --

16 COMMISSIONER FEDORCHAK: Uh-huh.

17 THE WITNESS: -- our service territory.

18 COMMISSIONER FEDORCHAK: Okay. And is that
19 usually up to the cities to decide or do you usually
20 seek them? Like who initiates those, typically?

21 THE WITNESS: I don't know. We haven't -- we've
22 only updated existing ones since I've been with the city
23 -- or with Nodak, and that's me initiating that renewal.

24 COMMISSIONER FEDORCHAK: If you had a franchise
25 agreement to serve, do you think you'd have a stronger

1 position?

2 THE WITNESS: Certainly.

3 COMMISSIONER FEDORCHAK: I think that's it for
4 now. Thank you, Mr. Einarson.

5 ALJ DAWSON: Commissioner Christmann.

6 COMMISSIONER CHRISTMANN: Do your service
7 agreements for either new services or upgrades, are they
8 very specific to the company, or do you look at what
9 else is there and say, you know, if we build this out
10 to, like, the grain bin site, this is one thing and all
11 our cost is going to be in that and so that's it, as
12 opposed to there's potential development land in the
13 area and so we'll build a little larger and assume that
14 there will be development?

15 THE WITNESS: Well, it kind of depends on the
16 orderly layout of the system. And like with the example
17 I used in the south end of Grand Forks, they're all
18 within 600 feet so we make the decision about what will
19 go in and when and where and how big it should be. We
20 -- around Devils Lake with all these new campgrounds
21 that are going in and stuff like that, we consult with
22 the potential new member on how to -- on how large his
23 system would be and -- and build it accordingly to that.

24 I'm not sure if that answers your question or
25 not.

1 COMMISSIONER CHRISTMANN: Might this have been
2 built with a lesser capacity or a higher sign-up charge
3 for the existing customer if there weren't development
4 -- potential development land right next to it that was
5 outside of the city?

6 THE WITNESS: I don't know how much these
7 members were charged at the time that it was put in
8 place so I can't speak to that independently right now.
9 The -- probably more of a Steve, engineering question
10 really on how that is all developed.

11 COMMISSIONER CHRISTMANN: Okay. So this case
12 has been going on for quite a while already. Have you
13 had conversations with some of the other cooperative
14 managers within the association to inquire whether they
15 have filed all of their pre-2005 service agreements with
16 the Commission?

17 THE WITNESS: Not that specifically, no. We --
18 we have monthly meetings, zoom meetings, with our group.
19 And an update on what's been going on with this case has
20 been provided, but we've not specifically talked about,
21 have you filed your agreements and that kind of thing,
22 no.

23 COMMISSIONER CHRISTMANN: Are you aware of any
24 that have?

25 THE WITNESS: I know that Cass filed something a

1 while ago, like seven, eight years ago. But they were
2 working on a multi-phase agreement with Otter Tail.
3 They finished part of it and then that got kind of
4 derailed and the talk stopped.

5 COMMISSIONER CHRISTMANN: Okay. And are you
6 aware that Otter Tail filed this agreement with the
7 Commission?

8 THE WITNESS: Ours?

9 COMMISSIONER CHRISTMANN: Right.

10 THE WITNESS: No, I'm not.

11 COMMISSIONER CHRISTMANN: And if this question
12 is for someone else, I expect the attorney will let me
13 know, because I don't know who else to ask, but did you
14 read the filings leading up to this from both sides --

15 THE WITNESS: Yes.

16 COMMISSIONER CHRISTMANN: -- over the course of
17 time?

18 So Otter Tail, in one of theirs, spent several
19 pages discussing the case from, I believe, in the '60s
20 up in Divide County. Do you remember that discussion?

21 THE WITNESS: Vaguely.

22 COMMISSIONER CHRISTMANN: It sounds to me like
23 in that case, a school built outside of the city, the
24 co-op had a yard light or something like that, some kind
25 of a probably small service there. And it ended up in

1 the Supreme Court, I believe, and it was deemed that,
2 because the city gave them a franchise later, it had to
3 go to whoever the investor-owned utility was. How do
4 you feel this case differs from that?

5 THE WITNESS: I believe the difference is that
6 there's no ordinance with the city that requires a
7 franchise agreement. My recollection --

8 COMMISSIONER CHRISTMANN: No ordinance with
9 Drayton as opposed --

10 THE WITNESS: Drayton, right.

11 COMMISSIONER CHRISTMANN: Okay.

12 THE WITNESS: I think that's my -- my
13 understanding is that's the difference but --

14 COMMISSIONER CHRISTMANN: Okay. And I think you
15 said earlier that you believed your rates for service
16 for Love's Truck Stop would be similar or competitive or
17 something like that with Otter Tail's. And there's not
18 a hook-up charge here. Why do you think that they seem
19 to want to get service from Otter Tail?

20 THE WITNESS: Rates can be sometimes a little
21 bit hard to -- to give you an example of or get your
22 hands around, depending on the different -- the
23 different programs that are available and all that kind
24 of stuff. So I think one company can look at a proposed
25 load and say, based on power factor and load factor and

1 the peaks versus coincidental peaks and all those kinds
2 of things and give you one rate and then another company
3 can give you a different rate. So I think the
4 perception is that it would be cheaper to go with Otter
5 Tail. But we haven't had the opportunity to sit down
6 and describe the off-peak system that we have, the load
7 management system, and how it could benefit them to have
8 a dramatically-reduced rate.

9 We have a number of systems in our -- in our
10 company that utilize that. Our corporate building is
11 one of them. It's a simple way of reducing your -- your
12 energy cost, your demand cost, when you have the
13 capacity to do that. Some -- some do and some don't.
14 We believe that this one would be one that would be a
15 really good fit for it.

16 COMMISSIONER CHRISTMANN: Okay. No other
17 questions. Thank you.

18 ALJ DAWSON: Ms. Radermacher.

19 MS. RADERMACHER: Yes. Thank you.

20 REDIRECT EXAMINATION

21 BY MS. RADERMACHER:

22 Q. Now, on cross-examination by Mr. Sanderson,
23 there was some issue with whether or not Love's Truck
24 Stop was, in fact, a member of Nodak Electric as it
25 relates to the line extension policy. When new or

1 potentially new members come in, do you kind of advise
2 them, if you're going to do a line extension, this is
3 where we're at, this is what our policy states, and this
4 is what the co-op's going to do for you?

5 A. Yes. The membership application is basically
6 the last thing that happens right before you start
7 installing the temporary power for construction.

8 Q. Okay. And during your conversations with
9 Love's, at any point did they ask what your line
10 extension policy was?

11 A. For me, my -- not directly to me. I believe
12 that was conversations held with -- between our
13 engineers and the consulting engineers that Love's had
14 hired. I've not spoken to anybody from Love's about the
15 line extension policy that we have.

16 Q. But if Love's would have come on and actually
17 applied for membership, would they have been assured at
18 that point in time that when they became a member, that
19 that line extension policy was going to apply to them?

20 A. Yes.

21 Q. Now, Mr. Sanderson also stated that Otter Tail
22 has designed their system as well within city limits for
23 potential growth. Was McFarland's Addition part of city
24 limits prior to the end of 2019?

25 A. Prior --

1 Q. So give or take August of 2019 --

2 A. Right. No.

3 Q. -- because we're not entirely sure. So prior to
4 August of 2019 -- we can for sure -- was McFarland's
5 Addition part of the city?

6 A. No.

7 Q. And so it would be -- I think the presumption
8 would be that they didn't extend or develop plants on
9 the west side of I-29 because they didn't have -- the
10 municipality wasn't over on that side of I-29; correct?

11 A. Correct.

12 Q. So I would also guess that that's why we don't
13 see any distribution line in the -- relatively in the
14 area from Otter Tail. Is that safe to say?

15 A. Yes.

16 Q. And for Otter Tail to extend service to this
17 site versus Nodak, there's quite a bit of difference in
18 distance, isn't there?

19 A. Significant, yes.

20 Q. So when they're talking about, well, either one
21 of us would have to extend based on our approximate
22 location, I mean, we're not talking apples and apples,
23 are we?

24 A. No.

25 Q. Their extension would require boring under I-29;

1 is that correct?

2 A. Yes.

3 Q. When Nodak is already there?

4 A. Right.

5 Q. So this is not just next door as it would seem
6 to be assumed by counsel. Would you agree?

7 A. Agreed.

8 Q. Now, you kind of touched a bit on annexation and
9 how it can benefit a city. Have you seen where
10 annexation is also used to get around the choice of
11 electric providers?

12 A. Sort of seems like this could be one of them,
13 but that's a very strong potential.

14 Q. Okay. And so if the -- this was actually
15 annexed within the city of Drayton, that could
16 essentially usurp the question of a CPCN in front of the
17 PSC?

18 A. Yes.

19 Q. Is that fair to say? So now there was also
20 questions by Mr. Sanderson relative to whether or not
21 you -- that Nodak was specifically asked not to
22 challenge the decision, essentially, for Otter Tail to
23 serve. Do you recall anything relative to those
24 conversations?

25 A. Well, like I said, the -- I don't believe that

1 was the -- I don't remember if those were the words or
2 the tenor of the conversation. I believe the tenor was
3 something a little bit different in that the mayor from
4 Drayton was indicating that the city wanted Love's to be
5 served by Otter Tail because that's what Love's wanted,
6 and Love's was taking the position that they wanted
7 Otter Tail because they perceived it to be cheaper.

8 And I guess it was a conversation before that
9 where he'd indicated that he felt he should be able to
10 pick whoever he wanted. I'm not sure that -- I don't
11 remember if that came up in that conversation or not but
12 -- I don't remember that being said specifically --

13 Q. Okay.

14 A. -- don't challenge this.

15 Q. So even if they said don't challenge this, don't
16 you feel you have an obligation to challenge it to some
17 degree to preserve your territory?

18 A. I -- I have an obligation to protect the
19 investment that my members have made, yes.

20 Q. And so you -- it would basically be Nodak's
21 position not to just freely give up where -- especially
22 where it has facilities located within this area. Is
23 that safe to say?

24 A. Yes.

25 Q. And if Otter Tail -- if the shoe were on the

1 other foot, do you think that Otter Tail would simply
2 not fight for that territory?

3 A. Doubt it.

4 Q. Now, I think this was kind of touched on with
5 some of the commissioners. At any point has Otter Tail
6 actually sought to rescind agreement -- not just amend
7 it but sought to rescind the current service agreement?

8 A. No.

9 Q. And presumably, Nodak Electric and Otter Tail
10 have been operating under this service area agreement
11 for 50-plus years. Is that your understanding?

12 A. It appears that way.

13 Q. And you indicated that the service area
14 agreement doesn't just apply to the city of Drayton,
15 that it appears to apply to all of the territory in
16 which you and Otter Tail serve within Nodak's service
17 territory?

18 A. Yes. As Steve alluded to initially, Nodak is
19 currently the product of some co-op mergers. So this
20 does cover the initial Nodak service area. I don't know
21 for sure if it -- if it addresses any of the other stuff
22 from the co-ops that have merged into Nodak.

23 Q. Okay. But can you give -- since we don't have
24 the benefit of the other maps, can you just kind of, you
25 know, if you have an idea, what other cities or maps do

1 -- are attached to that service area agreement?

2 A. It would be the small municipalities around the
3 -- that Otter Tail serves around the -- our northeastern
4 corner of the state, like Minto or Manvel, little towns
5 like that.

6 Q. Okay. And have you had any issues with Otter
7 Tail relative to those small towns and where -- who is
8 supposed to serve what?

9 A. No. It's been pretty amicable. The truth of
10 the matter is most of those small towns don't expand
11 very frequently so there's not a lot of potential for
12 growth in some of the small communities. So it's less
13 likely to come up there than it is in a larger
14 community.

15 Q. Okay. And you were also asked if there's been
16 changes to the service area agreement subsequent to
17 1968, and you just indicated in your testimony that the
18 changes are few and far between. So it appears that
19 there have been some amendments, to your knowledge, to
20 maybe some maps subsequent to the 1968 agreement?

21 A. Yes.

22 Q. And do you know what areas those were relative
23 to, just --

24 A. I don't. There's been a couple of changes to
25 some of the -- some of the maps that were agreed to and

1 memorialized in the -- in the document, in the maps.

2 Q. Okay. And so Otter Tail, presumably, was part
3 of those negotiations and subsequent agreement?

4 A. Right.

5 Q. So going back to Exhibit Nodak 6, counsel had
6 you refer to certain paragraphs within the service
7 agreement. But would you agree that when counsel kind
8 of asked you those questions, they were kind of
9 nitpicking which was favorable to Otter Tail versus what
10 might not be favorable to Otter Tail in asking you to
11 recite certain provisions?

12 A. Yes. I think you can certainly take any
13 statement in there and take it out of context and have
14 it mean something different rather than reading the
15 document as a whole.

16 Q. Okay. For example, in paragraph 2, more than it
17 just being -- or, I mean, excuse me, paragraph 1, when
18 it talks about being used as a guide, do paragraph 2 and
19 3 basically encounter what looks like -- I mean,
20 encompass what would be an agreement or a contract
21 between the two as to what exactly is going to happen
22 relative to certain property delineated on the maps?

23 A. I believe so, yes.

24 Q. And so is it your understanding, reading the
25 entire service agreement, it's not merely a guide, is

1 it?

2 A. No.

3 Q. It appears to be a contract by which you guys
4 agree this is my service territory, this is your service
5 territory unless we agree otherwise?

6 A. It has signatures on it. If it was a guide, we
7 wouldn't have to sign it.

8 Q. Okay. And there was also a question about
9 whether or not there was continued meetings as expressed
10 inside -- in paragraph 8. Would you agree that
11 paragraph 8 conditions why those meetings would occur?

12 A. It says to discuss any problems that have
13 occurred over the last year, or that may have occurred
14 over the last year.

15 Q. Okay.

16 A. Talk about any further agreements that may take
17 place.

18 Q. Okay. And if I may read, specifically it says:
19 "We will get together for a meeting to
20 discuss any problems that may have occurred
21 the last year, and talk about any further
22 agreements that may take place."

23 So presumably, would you agree that if there
24 were no further agreements or any problems, that there's
25 not any requirement to meet?

1 A. I believe it to be the reason that they quit
2 meeting, but, again, that's not documented that I could
3 see. But I believe that that's the case.

4 Q. Okay. But presumably, under paragraph 8, it
5 kind of leaves that open to interpretation, that that's
6 -- that they necessarily were not required to meet?

7 A. Correct.

8 Q. And to your knowledge, inside of the service
9 area agreement or the attached map, you know, was there
10 any sort of sunset clause as to when this agreement
11 would no longer be valid?

12 A. No.

13 Q. Now, you talked about, with Xcel Energy, that
14 you did actually have that agreement to some extent
15 filed with the PSC. Was that post 2005?

16 A. Yes.

17 Q. And what was the basis for having that agreement
18 at that point, specific to that one, filed?

19 A. So as I pointed out earlier when talking about
20 the -- when you had the map up on the screen and you
21 could see that the lines around the cities were drawn
22 with a pencil and a ruler and on very small scale. In
23 some cases, it's not very clear if it's middle of the
24 road or the north side or south side of the road,
25 etcetera.

1 We had an instance near -- on the north end of
2 Thompson, North Dakota, where it was somewhat unclear
3 where that line was supposed to be. So the Xcel
4 representatives came to the office and we sat down and
5 talked about it, came to an agreement, and Xcel filed
6 that change with the Commission.

7 Q. Okay. And so there was an actual, what would
8 probably be a significant amendment on that contract
9 that, at that point in time, they thought it should be
10 subject to PSC approval. Would you say that's safe to
11 say?

12 A. Yes.

13 Q. Now, and I don't know how particularly relevant
14 this is, but since it was a question one of the
15 commissioners asked, would you be willing to shed some
16 light on when you talked that there's kind of some
17 issues about renegotiating or going into new service
18 area agreements regarding large loads, was that an issue
19 because Otter Tail specifically thought that loads over
20 a certain kilowatt or megawatt, that they automatically
21 go to them without any contention whatsoever and PSC
22 governance?

23 A. Yes.

24 Q. And so is that what halted, essentially, Nodak
25 from renegotiating anything?

1 Q. Okay. You would have -- you would have -- the
2 minutes would be published for Nodak to understand what
3 was going to be on the agenda; correct?

4 A. I assume they're published somewhere.

5 Q. And you certainly knew enough to appear at a
6 prior -- you knew when the city of Drayton city council
7 meeting was going to be in June of 2019; correct?

8 A. Yes. We were alerted by your staff.

9 Q. Okay. And there was nothing that prevented
10 Nodak from appearing at the August 2019 Drayton city
11 council meeting and voicing their concerns over
12 annexation; correct?

13 A. No.

14 Q. Okay. You were asked a bit by Commissioner
15 Christmann regarding that the size -- or the farmstead
16 and the three-phase service that you were there. What
17 size transformer is on those -- that grain bin site on
18 the farm to the west of McFarland's?

19 A. I have no idea.

20 Q. When was that transformer installed to provide
21 three-phase service to that customer?

22 A. As I said, I'm unaware of if it -- if 2009 was
23 the first time it was three-phase or if it
24 was three-phase before that. I don't know that. I know
25 that it was upgraded in 2009.

1 Q. How much larger was that transformer sized for
2 future growth than what was needed for that customer?

3 A. We wouldn't -- we wouldn't size the transformer
4 larger for that specific load, no.

5 Q. Okay. That load was sized for the service that
6 was needed for that customer?

7 A. The transformer was, yes.

8 Q. Okay. And you were asked about the distance.
9 And I believe your testimony was Nodak's proposed
10 extension is 350 feet, roughly?

11 A. Roughly.

12 Q. And Nodak -- or Otter Tail's proposed extension
13 is three times that?

14 A. Roughly.

15 Q. And you consider a thousand feet extension
16 significant? That's your testimony?

17 A. In this case, yes.

18 Q. Okay. You were asked a question by counsel that
19 annexation can be used by cities to usurp the
20 jurisdiction of this commission in granting a CPCN.
21 That was your testimony?

22 A. She asked that question, yes.

23 Q. And you answered that affirmatively; correct?

24 A. I said it seems like it could be --

25 Q. Okay.

1 A. -- this could be one of them.

2 Q. And why annexation usurps the jurisdiction of
3 this Commission is because cities have the
4 constitutional right to select whatever electric service
5 provider they want under the North Dakota Constitution;
6 correct?

7 A. They have the right to franchise, yes.

8 Q. Okay. And that franchise power usurps this
9 Commission's authority to determine who provides
10 service?

11 MS. RADERMACHER: Objection, Your Honor. He's
12 calling for a legal conclusion from the witness.

13 ALJ DAWSON: Mr. Sanderson?

14 MR. SANDERSON: Yeah. I'm following up on
15 questions that were asked by counsel, and this witness
16 testified to this. I have every right to go into this
17 line of questioning.

18 MS. RADERMACHER: I don't -- Your Honor, if I
19 may? I don't disagree with the first question he asked,
20 but now he's asking him that -- he's basically asking
21 the witness to say that he agrees with Otter Tail's
22 position that -- that this -- the PSC has no
23 jurisdiction over the issue, and that's a legal
24 conclusion.

25 ALJ DAWSON: I'm going to agree with you in that

1 I think this last question was asking him his legal
2 opinion and that he's not qualified to give that.

3 Although your questions up to then were fair
4 game considering the previous questions asked.

5 MR. SANDERSON: Fair enough. Thank you, Your
6 Honor. I will move on.

7 BY MR. SANDERSON:

8 Q. You were asked about different relationships and
9 other circumstances between Otter Tail and Nodak in
10 other locations. Do you recall that testimony?

11 A. Yes.

12 Q. Okay. Are you aware of any other time where
13 there's been a situation between Otter Tail and Nodak
14 where a piece of property has been annexed into the city
15 and the city has instructed Otter Tail to serve the
16 annexed area? Has that situation ever arisen between
17 Otter Tail and Nodak prior to this case?

18 A. The City of Devils Lake passed an ordinance
19 requiring a franchise agreement to do business in the
20 city. And that prompted the discussion between us to --
21 between Otter Tail and Nodak to redo that -- the service
22 area agreement.

23 Q. Okay. And that's a situation, I believe, you've
24 testified Nodak has a franchise to serve within the city
25 of Devils Lake; correct?

1 A. No, we don't.

2 Q. Okay. You don't have a franchise in the city?

3 A. No, we do not.

4 Q. Okay. Did the city of Devils Lake specifically
5 instruct Otter Tail that they have the obligation to
6 serve specific property within -- that's in dispute
7 that's been annexed?

8 MS. RADERMACHER: I would object, Your Honor.
9 I'm not sure my client would be -- or that he would have
10 the knowledge in which to answer that question. Because
11 it's asking, basically, essentially, about a
12 conversation or agreements that would have occurred
13 between Otter Tail and the city of Devils Lake. And I
14 would also object on the grounds of relevance.

15 ALJ DAWSON: Mr. Sanderson?

16 MR. SANDERSON: Yes. The witness was asked on
17 redirect about other situations and relationships that
18 have occurred between Otter Tail and Nodak regarding the
19 service area agreement in other locations, and he
20 testified to that. And my question was: Have any of
21 those situations been the result of where a city has
22 annexed property and instructed Otter Tail to serve?

23 ALJ DAWSON: I'm going to allow the question.

24 A. I can't say specifically that the city has -- I
25 can't remember the word you said -- has required or

1 obligated them to serve. The -- in the newly annexed
2 area, we didn't have a franchise agreement because the
3 service area agreement was not -- we didn't finish the
4 negotiations. So Otter Tail did end up serving those,
5 yes.

6 BY MR. SANDERSON:

7 Q. In any of those other situations, has the city
8 passed a resolution regarding who is to serve specific
9 property?

10 A. Not that I'm aware of.

11 Q. Okay. So this case would be the first time that
12 that issue has arisen between Nodak and Otter Tail that
13 you're aware of?

14 A. That I'm aware of.

15 Q. Okay. And you were asked on redirect about the
16 service area agreement, and I believe you testified to
17 that you believe that is a contract between Nodak and
18 Otter Tail?

19 A. That was my statement, yes.

20 Q. Okay. And again, just so we're clear, the city
21 of Drayton is not party to that contract; correct?

22 A. Correct.

23 Q. Now, have you commenced any action in any courts
24 in North Dakota to enforce your contractual rights for
25 an alleged breach of contract?

1 A. No.

2 MR. SANDERSON: Okay. I have no further
3 questions. Thank you, Judge.

4 ALJ DAWSON: Mr. Johnson.

5 RE CROSS EXAMINATION

6 BY MR. JOHNSON:

7 Q. In talking about development around communities,
8 what's the difference between like a Drayton and a Minto
9 for how you plan?

10 A. An interstate, for one thing. The -- you know,
11 some small towns just don't expand. There's no new
12 housing getting built. There might be a grain elevator
13 or something like that. But other communities do have
14 some potential for expansion so you would -- you would
15 look at that distribution system considerably
16 different --

17 Q. Okay. Other than --

18 A. -- based on best guess judgments.

19 Q. Sure. Other than interstate, is there much of a
20 difference in population between Drayton and Minto?

21 A. I think Drayton is larger, but not much.
22 Insignificantly compared to a Grand Forks or Fargo or
23 Bismarck.

24 Q. Sure. So you believe that the service agreement
25 is a good, solid contract between you and Otter Tail

1 Power?

2 A. I do.

3 Q. Okay. How do you deal with paragraph 2 in the
4 fact that it says:

5 "The intent being to avoid any transfer of
6 customers when such areas may be annexed by
7 the municipalities"?

8 Doesn't that say that if the cities annexes part
9 of it, you get to keep your customers and they get to do
10 what the city gets to do with their franchise?

11 A. I think what that gets to is that the -- when
12 the maps were drawn, they were drawn outside the city
13 limits. And so as they -- in that periphery outside the
14 city limits, if it was a Nodak customer currently, then
15 it would become an Otter Tail customer after that
16 annexation in the first contract. The second one was
17 let's negotiate. But then once you get beyond that
18 boundary, I think that's the difference.

19 Q. And you feel like the service agreement is clear
20 and unambiguous, everything in there is very clear and
21 it deals with everything? There's no question, this
22 should be able to answer all areas?

23 A. I think it's fairly clear. However, you know,
24 if you were to redo this today, it would probably be
25 more than four pages long. I don't know any legal

1 document that's less than four pages long, other than
2 birth certificate.

3 (Laughter)

4 Q. Along those lines, if it would be redone today,
5 would those maps look like they look like, or would they
6 have legal descriptions of sections and quarter sections
7 and specifically defined an area by legal description
8 rather than a crayon or pencil drawing on a sheet of
9 paper that nobody can tell where the line is?

10 A. I'm sure they would be drawn with AutoCAD or
11 some sort of mapping software that would be right down
12 to the GPS coordinates, yes. But that technology was
13 not available back in 1960.

14 Q. Sure. And how is it that we know for
15 100 percent certain that that line was drawn in the
16 right place and that this isn't actually within the
17 original area that Drayton was supposed to have?

18 A. Are you asking --

19 Q. There's --

20 A. -- it's been modified or --

21 Q. No, no. There's no GPS, there's no legal lot
22 descriptions, there's nothing on that map other than a
23 line. And I'm assuming -- what I'm asking is: Other
24 than guessing by looking at, you know, line to line on
25 the map on what is excluded in that quarter section, or

1 whatever size area that is, how do we know that that's
2 completely out of there and not in there?

3 A. Because I think you can see the interstate
4 highway on there and it goes down the interstate.
5 Whether it's down the middle or -- the line isn't
6 exactly straight, but to me it's pretty obvious that it
7 was meant to be that the interstate was the dividing
8 line.

9 Q. So it's not straight, it's crooked, but you're
10 really sure so that's why we know it's not in there?

11 A. It's crooked within the confines of a roadway.
12 It's not crooked within off on a quarter section or a
13 half mile or something like that. It's -- it's small
14 but it's not that small.

15 Q. And I guess maybe I need to look at it again.
16 What roadway is it on?

17 A. I-29.

18 Q. Okay, that is on the map. All right.

19 MR. JOHNSON: No further questions.

20 ALJ DAWSON: Commissioner Kroshus.

21 COMMISSIONER KROSHUS: Okay. I just have a
22 couple. It was just prompted by questions you were
23 asked.

24 Does Nodak ever -- and I don't know if Grand
25 Forks would -- if this would be applicable or not

1 applicable, but let's -- just to make it easy, outside
2 of Grand Forks, does Nodak ever vote at city council
3 meetings in, whether it's Thompson or --

4 THE WITNESS: No. We're not party to vote on
5 it.

6 COMMISSIONER KROSHUS: Okay. And maybe -- but
7 it just made me think. On the grain bins, the
8 three-phase service, so the transformer is sized to that
9 facility. But is it true that transformers are normally
10 sized to a specific, just to the specific customer, or
11 are they sized for pushing more load downstream or
12 expansion as well?

13 THE WITNESS: For certain customers or members,
14 they're sized for just that specific one. For example,
15 in a residential development, we may have three or four
16 houses coming off of one transformer. So the first one
17 in there would be sized for the larger development. But
18 the line going in there makes more of a difference than
19 the transformer does.

20 COMMISSIONER KROSHUS: Okay. So it's really
21 about the line, not the transformer?

22 THE WITNESS: Right.

23 COMMISSIONER KROSHUS: Okay. And just to make
24 sure I've got my dates right. So on February 23, 2019,
25 CEI contacts Nodak; June of 2019, there's this city