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1 council meeting that I believe you had staff present at;
2 August 19, 2019, the McFarland's Addition was annexed.

3 When did the conversation break off with Love's
4 or you were -- when were you -- when did they indicate
5 that they wanted service from Otter Tail instead?

6 THE WITNESS: Prior to the -- would have been in
7 June of 2019.

8 COMMISSIONER KROSHUS: So before or after the
9 city council meeting? Do you remember?

10 THE WITNESS: Before.

11 COMMISSIONER KROSHUS: Before? Okay. Then the
12 city council meeting. Okay. I think I've got it.

13 Do you have any -- I can look this up. There's
14 a Grand Forks Herald article on exhibit -- is it Exhibit
15 C? At any rate, it's the announcement of Love's Truck
16 Stop. Or maybe it's a part of Exhibit 1. So the
17 question is -- it's not dated. And I can -- I can track
18 it down, but do you know offhand? I see the temp is
19 79 degrees so I'm guessing it wasn't nine months out of
20 the year in North Dakota. We'll call it June, July.

21 THE WITNESS: I don't know the date of the
22 article.

23 COMMISSIONER KROSHUS: And I can look that up so
24 that's fine. No other questions. Thank you.

25 ALJ DAWSON: Commissioner Fedorchak.

1 COMMISSIONER FEDORCHAK: Some of the questions
2 make me curious. So the service agreement is a
3 contract. What are your -- what's your potential for
4 going against Otter Tail for breach of contract since
5 they're clearly, under your interpretation of this, and
6 even according to the map, operating outside of the
7 service area agreement -- in your territory in the
8 service area agreement?

9 THE WITNESS: What's our opportunity?

10 COMMISSIONER FEDORCHAK: Yeah.

11 THE WITNESS: I mean, I think we are first
12 looking at a remedy from this body, and after that we'll
13 have to have some conversations with the attorneys
14 about, I mean if we're unsuccessful here, look at what
15 our next step might be.

16 COMMISSIONER FEDORCHAK: Okay. And then on the
17 -- on your discussion with Brian, I just want to make
18 sure I'm understanding it too, because I stumbled over
19 this the first time. But on the paragraph where it
20 talks about -- paragraph 2, "The company shall serve all
21 territory located within and adjacent to urban areas as
22 outlined on attached maps, the intent being to avoid any
23 transfer of customers when such areas may be annexed by
24 municipalities."

25 So the envision was, the Drayton -- on the map,

1 the Drayton city limits is outlined in black, and then
2 you go out, the service area agreement says, no more
3 than a mile, I don't know how far it is, but around
4 that, and provide that additional territory that goes
5 for the company. And it's within -- and then you draw
6 the red boundary, and anything beyond that is yours.

7 Your interpretation of number 2 is that anything
8 that is annexed would likely be that territory between
9 the Drayton city limits on this map and the red boundary
10 and that you've already granted, under this agreement,
11 that that would go to the company --

12 THE WITNESS: That's correct.

13 COMMISSIONER FEDORCHAK: -- Otter Tail, in this
14 case?

15 THE WITNESS: Yes.

16 COMMISSIONER FEDORCHAK: And then -- so your
17 issue here today is this now is going outside of that
18 boundary --

19 THE WITNESS: Right.

20 COMMISSIONER FEDORCHAK: -- and annexing
21 property. And so your agreements where you'd kind of
22 just go along with it under the service agreement,
23 that's not -- doesn't apply to this situation?

24 THE WITNESS: Right. That applies to the area
25 in between the city limits on the map and the red

1 boundary on the map.

2 COMMISSIONER FEDORCHAK: Yeah. Okay.

3 THE WITNESS: If it would apply to stuff beyond
4 the red boundary, there would be no reason to have this
5 agreement, period.

6 COMMISSIONER FEDORCHAK: Sure. Thank you.

7 ALJ DAWSON: Commissioner Christmann.

8 COMMISSIONER CHRISTMANN: Just one line. To the
9 extent that the line on the map is not precise, am I
10 understanding your testimony correctly that the
11 vagueness might involve whether it's meant to be down
12 the middle of the interstate as opposed to the north or
13 south lane or the north or south right-of-way, but that
14 it's clearly the interstate and that the McFarland
15 Addition lies to the west of that line no matter how the
16 vagueness is interpreted?

17 THE WITNESS: That's exactly my testimony, yes.

18 COMMISSIONER CHRISTMANN: Thank you.

19 ALJ DAWSON: Any further questions?

20 MS. RADERMACHER: Yes, just briefly, because we
21 did touch a little bit on the questions that I had.

22 REDIRECT EXAMINATION

23 BY MS. RADERMACHER:

24 Q. But my understanding, based on the specs that
25 were provided to you by CEI, they actually wanted a

1 separate transformer on the property serving the Love
2 station; correct?

3 A. Those were conversations had with the
4 engineering department. I would assume that would be
5 the case. So for a three-phase service, they would want
6 their own transformer, yes.

7 Q. Okay. And the specs kind of called for, is your
8 understanding, that there would be a transformer, it was
9 just a question of whether or not a pad would be
10 included or not included?

11 A. Right. It's shown on their -- on their plot
12 plan.

13 Q. Okay. And so is that pretty typical, though?
14 And granted, I guess it's more of an engineering
15 question, but pretty typical for a three-phase service,
16 especially one that would have load like Love's, for
17 example, they would have a separate transformer kind of
18 built into their specs?

19 A. Typically, yes.

20 Q. And so when you're sizing something out, per se,
21 like on that grain bin transformer, that would be
22 specific to the grain bin transformer? Accurate?

23 A. (No audible response.)

24 Q. And so it would be, as you said, I think --
25 well, and as I think Mr. Breidenbach also testified to,

1 that you size the line different in anticipation and --

2 MR. SANDERSON: Judge, I'm going to object to
3 the leading form of these questions, and also beyond the
4 scope of any recross or re-questioning.

5 MS. RADERMACHER: This is relative to the
6 question that Commissioner Kroshus did ask regarding
7 sizing the transformer versus sizing the line.

8 ALJ DAWSON: Well, I'll allow it for -- within
9 the scope, but they are fairly leading questions.

10 MS. RADERMACHER: Okay. I apologize.

11 BY MS. RADERMACHER:

12 Q. Okay. So sizing the line. So did you size the
13 line differently here in anticipation of development?

14 MR. SANDERSON: Objection. Foundation for this
15 witness as to the timing and decision-making on that.
16 He's testified multiple times he doesn't even know when
17 the line was installed.

18 MS. RADERMACHER: I'll withdraw the question,
19 Your Honor.

20 Q. There was also a question regarding breach of
21 contract. Has a breach of contract been taken off the
22 table as a possible alternative in this case?

23 A. No.

24 MS. RADERMACHER: And I think that every other
25 question I had has been made by the Commission and

1 answered so I have no further questions.

2 MR. SANDERSON: No questions.

3 ALJ DAWSON: Any further questions?

4 Seeing none, you may step down.

5 THE WITNESS: All right.

6 ALJ DAWSON: Do you have any further witnesses?

7 MS. RADERMACHER: I do not. Protestant rests
8 unless rebuttal.

9 ALJ DAWSON: Mr. Sanderson, we're about an hour
10 and ten minutes in. You have a witness? I'm trying to
11 weigh whether we should take a break now or in, like you
12 said, a half hour.

13 MR. SANDERSON: I mean, I certainly know -- is
14 Charles Olson on line? My questioning of my first
15 witness, Mayor Olson, will be fairly short, but it's up
16 to you and the Commission.

17 ALJ DAWSON: I think we'll go ahead and take one
18 witness and then take a break.

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

20 ALJ DAWSON: Yes, you may.

21 MS. RADERMACHER: Here are the original Exhibits
22 6 through 11.

23 ALJ DAWSON: Thank you.

24 He's on the screen right there.

25 Mr. Olson?

1 MR. OLSON: Hello.

2 ALJ DAWSON: Yes. I'm Judge Dawson. And I'm
3 required by law to tell you the penalties for perjury in
4 this state. Have you heard them already today?

5 MR. OLSON: I have.

6 ALJ DAWSON: So you understand what perjury is
7 and the penalties for it?

8 MR. OLSON: I do.

9 ALJ DAWSON: Understanding so, do you promise or
10 swear that the testimony that you're about to give will
11 be the truth, the whole truth, and nothing but the
12 truth?

13 MR. OLSON: I do.

14 ALJ DAWSON: Mr. Sanderson, you may begin.

15 MR. SANDERSON: Thank you, Your Honor.

16 **CHARLES OLSON,**

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

19 DIRECT EXAMINATION

20 BY MR. SANDERSON:

21 Q. Mayor Olson, can you please state your full name
22 and address?

23 A. Charles Allen Olson, 311 North Main Street,
24 Drayton.

25 Q. And are you currently the mayor of the city of

1 Drayton?

2 A. Yes, I am.

3 Q. How long have you lived in Drayton?

4 A. My whole life. 56 years.

5 Q. And how long have you been the mayor of the city
6 of Drayton?

7 A. It will be three years in June.

8 Q. Okay. And for those who may not know or have
9 been to Drayton before, can you tell us a little bit
10 about your city?

11 A. Drayton is a small community about 45 miles
12 north of Grand Forks, right between I-29 and the Red
13 River.

14 Q. Now, Mayor Olson, I want to start, what's been
15 already admitted into this case is Otter Tail Exhibit
16 No. 1. And it is ordinance number 51, a franchise
17 between the City of Drayton and Otter Tail. Are you
18 familiar with this document?

19 A. Yes, I am.

20 Q. And was this a franchise agreed upon between the
21 City of Drayton and Otter Tail?

22 A. Yes. This is prior to my term as mayor, but
23 reading through it, that's how it appears to me.

24 Q. Okay. And Otter Tail Exhibit 1, the franchise,
25 is dated May 3rd of 2011; is that correct?

1 A. Yes.

2 Q. And under the terms of the franchise agreement,
3 is Otter Tail obligated to provide electric service to
4 customers in the city?

5 A. Yes.

6 Q. Now, Mayor Olson, we're here today regarding
7 proposed customer, the Love's Truck Stop, that they
8 intend to construct a facility near Drayton. Are you
9 familiar with that proposed facility?

10 A. Yes, very familiar.

11 Q. Okay. When did you as mayor become first aware
12 that Love's was considering building a truck stop near
13 Drayton?

14 A. I believe it was shortly after I became mayor in
15 June of 2018, so it was probably July or August of '18.

16 Q. Okay.

17 A. Heard rumors that they were looking at property
18 here in Drayton.

19 Q. Okay. And just so I'm clear, Mayor, that's June
20 or July of 2018; correct?

21 A. Yes. I hadn't spoke to Love's at that point but
22 I heard rumors from a landowner that they had been
23 visiting on it, very excited about it.

24 Q. Okay. When did you first have any discussions
25 on behalf of the city with Love's regarding that

1 proposed facility?

2 A. I don't remember the actual date. I would think
3 it was later that summer of 2018, but I -- forgive me, I
4 don't -- I don't know exactly when that was. I was
5 contacted by Steve Walters, who I think is titled
6 project manager for Love's.

7 Q. Okay. And can you just explain to the
8 Commission what has been your involvement with the city
9 with respect to the Love's project?

10 A. Well, Steve Walters contacted me. And right
11 from the beginning, he was very pro community-minded.
12 And he told me that before they purchased the -- that
13 property, he would like it annexed into the city. I
14 explained to him that we had, like, a tax abatement
15 program, and he said, we don't want any part of that, we
16 want to be good members of the community, we want to pay
17 all of our taxes. But they wanted to be annexed into
18 the community so that we could provide them with water
19 and sewer service.

20 Q. And, Mayor Olson, was that conversation with
21 Love's about annexation, did that occur in your
22 conversations in 2018?

23 A. I'm very sure it was. It was probably one of
24 the first conversations we had.

25 Q. Okay. And let me ask you, did -- as mayor, did

1 you hold a public meeting in Drayton to discuss the
2 Love's facility?

3 A. Yes, we did, in the school gymnasium.

4 Q. Okay. And do you recall when the city of
5 Drayton had a public meeting to discuss the Love's
6 potential expansion into the city?

7 A. I think I have it here in my notes, if you give
8 me a moment, somewhere.

9 And you may have to forgive me, but I can't find
10 it. But it -- it -- yeah, I -- I apologize, I don't
11 know when that was. It was -- I think it was the end
12 of 2018 or early 2019. And I really apologize but I
13 don't have that.

14 Q. Does January 6, 2019, coincide with your
15 recollection?

16 A. That very well could be, yes.

17 Q. Well, and with respect to that public meeting,
18 before I ask you about that, your testimony is the
19 decision to annex the property into the city had been
20 made before the public meeting?

21 A. Yeah. Well, we had talked about it. I -- I
22 don't -- I don't think that I signed the annexation and
23 all that by then, but we had talked about it right away,
24 early on. Steve Walters had told me they wanted to be
25 annexed into the city.

1 Q. Yeah. And I guess, Mayor, my question was poor,
2 but it should have been -- the discussions regarding
3 Love's intention to have the property annexed in had
4 been had prior to the January 2019 public meeting?

5 A. Yes.

6 Q. Okay.

7 A. Definitely. Yeah, the discussion. Yeah.

8 Q. And can you just explain to the Commission, the
9 property that Love's selected for construction of that
10 facility, where was that property located?

11 A. That was right west of Drayton across the
12 interstate. It would be south of Highway 66 and west of
13 I-29.

14 Q. Okay. And when -- again, and I believe you've
15 -- when Love's first approached you and you had the
16 initial discussions about that, was that property
17 located within the city of Drayton?

18 A. At that time it was not.

19 Q. Okay. Now, Mayor Olson, I believe you have in
20 front of you Otter Tail Exhibit 2. Do you recognize
21 that document?

22 A. Let me find it. Yes.

23 Q. And Otter Tail Exhibit 2 is -- it's a
24 McFarland's Addition plat and it also has some Drayton
25 city council approval dated August 12, 2019. And that's

1 signed by Charles Olson, mayor. Was that you?

2 A. Yes, it was.

3 Q. And that's your date on Exhibit 2, dated
4 August 15, 2019?

5 A. Correct.

6 Q. And do you recall, who owned the property that
7 Love's wanted to build their facility on?

8 A. Tyler McFarland.

9 Q. Okay. And did Mr. McFarland submit a plat for
10 that property for annexation into the city of Drayton?

11 A. Yes, he did.

12 Q. Okay. And based on what we see in Otter Tail
13 Exhibit 2, that was approved at a city council meeting
14 by the city council in August of 2019?

15 A. Yes.

16 Q. Why did the City of Drayton approve annexation
17 of this property?

18 A. Well, again, first of all, Love's wanted to be
19 part of the city so we could provide them services, but
20 you have to understand the opportunity this is for a
21 small community. Steve Walters, again, the project
22 manager, said that they can employ up to 40 people.
23 Well, in a people of 750 people, this is the biggest
24 economic thing to hit this community since American
25 Crystal in the 1960s. It's just a huge opportunity.

1 And so, you know, we definitely want this to happen.

2 Q. Did anyone appear and oppose the annexation of
3 this property at the city council meeting?

4 A. Not that I remember.

5 Q. And so as we see from Exhibit 2, the McFarland's
6 property was eventually -- and the annexation was
7 approved by the City of Drayton. Was that property
8 subsequently sold?

9 A. Yes.

10 Q. And who purchased that property?

11 A. Well, it -- I don't recall the name. It's not
12 Love's. I believe it's a holding company or the parent
13 company of Love's, and I -- the name I can't recall, but
14 it was for Love's.

15 Q. Okay. And that was -- your understanding is a
16 company affiliated with Love's purchased that property
17 for construction of the Love's Truck Stop?

18 A. Correct.

19 Q. Okay. Now, Mayor Olson, have you been
20 monitoring or listening to the hearing that's occurred
21 today?

22 A. About 90 percent of it.

23 Q. Okay. As part of that, did you hear testimony
24 by a Nodak witness regarding conversations that took
25 place between the city and Nodak regarding the

1 annexation and service for this property?

2 A. Yes.

3 Q. Can you just explain to the Commission what you
4 recall about your communications with Nodak regarding
5 service to the Love's Truck Stop and McFarland's
6 Addition?

7 A. Well, I think that Mr. Einarson's testimony was,
8 from my recollection, spot on. You know, we met a few
9 times; never in person, always on the phone. We had
10 different conversations. And I do remember asking him
11 not to -- I don't know if the right term is protest
12 this, because this is huge for the city of Drayton and I
13 didn't want any roadblocks. I'm not saying that it was
14 a deal breaker for Love's, I'm not saying that at all.

15 If I recall correctly, and I think I do,
16 Mr. Walters told me that they figured they could save
17 \$30,000 a year with Otter Tail as opposed to Nodak.
18 Well, that's real money. And I just didn't want
19 anything like that to come up and possibly make them
20 change their mind. And again, that was never suggested
21 to me, but I just wanted to eliminate any possible
22 roadblocks for them coming to town.

23 Q. How many times were you part of communications
24 with Nodak regarding this service to the Love's?

25 A. Again, I would have to agree with everything Mr.

1 Einarson said, and I think it was three or four times.

2 Had I realized at the time that this was coming
3 to this, I would have taken notes, to be honest, but I
4 never foresaw this happening.

5 Q. But just so I understand your testimony, Mayor
6 Olson, during one of your conversations you made it
7 clear to Nodak and requested that they not challenge or
8 do anything to interfere with Love's development of this
9 project?

10 A. I most certainly did.

11 Q. Okay. Now, I'm going to ask you to look at
12 what's been marked in this case as Otter Tail Exhibit 3.
13 And this is a resolution that was passed by the City of
14 Drayton regarding service to McFarland's Addition in
15 April of 2020. Are you familiar with this document?

16 A. Yes.

17 Q. And again, is that your signature on the bottom
18 of this document?

19 A. Yes, it is.

20 Q. Can you just explain why the City of Drayton
21 passed a resolution authorizing electric service to
22 McFarland's Addition?

23 A. Again, because I thought it was very important
24 that Love's comes to town, and part of that was Otter
25 Tail supplying power to them. And we wanted some kind

1 of documentation to -- I can't choose the right words
2 here, but to reinforce that, that we wanted Otter Tail
3 to supply power to that addition into the city and to
4 protect our rights, because from what I believe, it's
5 our decision to decide would supplies power.

6 Q. And does Otter Tail Exhibit 3 demonstrate the
7 City of Drayton's decision as to who it wants to provide
8 electric service to Love's Truck Stop in McFarland's
9 Addition within the city of Drayton?

10 A. Yes.

11 Q. And the electric service provider the City of
12 Drayton has selected to provide service to Love's in
13 McFarland's Addition is Otter Tail Power; correct?

14 A. Correct.

15 Q. Now, has Nodak -- did Nodak approach the city
16 seeking a franchise to serve customers?

17 A. I don't know that they officially requested one,
18 but they did attend a meeting and ask about one.

19 Q. Okay. Was that the June 10, 2019, meeting where
20 Steve Breidenbach of Nodak attended and inquired about
21 the city granting a franchise to serve?

22 A. Yes, I believe so.

23 Q. Has the City of Drayton ever granted a franchise
24 to provide electric service to Nodak?

25 A. No.

1 Q. Now, Mayor Olson, you've heard some testimony
2 regarding a service territory agreement mentioned today
3 and dated in 1968 between Nodak and Otter Tail. Are you
4 aware of the City of Drayton ever signing or agreeing to
5 be bound by that 1968 service area agreement?

6 A. Not to my knowledge. But, of course, I wasn't
7 very old then.

8 Q. And at no time has Nodak ever approached you
9 while you've been a member of the city council or mayor
10 and asked the city to be bound by the terms of that
11 service agreement?

12 A. That is correct, they have not.

13 Q. Mayor Olson, I have no further questions. Thank
14 you.

15 ALJ DAWSON: Ms. Radermacher.

16 CROSS EXAMINATION

17 BY MS. RADERMACHER:

18 Q. Hello, Mayor Olson. Can you hear me?

19 A. Hello. Yes, I can.

20 Q. I apologize, I'm going to have to reposition, I
21 think, a little bit here so I can be heard.

22 So you kind of discussed franchises with respect
23 to Drayton. Are you aware of the law as it applies to
24 franchises in the city limits?

25 A. Well, I had a conversation with our city

1 attorney, Steve Ekman, when -- when Nodak approached the
2 city. And the way I understand it, and I could be
3 mistaken, was that we issue a franchise but it's not
4 exclusive, but it does guarantee then the company we
5 might issue the franchise with has to supply power to
6 the city. But it's not an exclusive contract, the way I
7 understand.

8 Q. Okay. And so you would agree that it doesn't
9 exclude another service provider from actually providing
10 service within the city; correct?

11 A. The way I understand it, that would be correct.

12 Q. Okay. And so when it says "obligate" under
13 franchise, that might be a fairly strong word, but it
14 might be more appropriate to say permitted, that they
15 are permitted to provide power within the city limits?

16 A. The company that's franchised?

17 Q. Well, in any sort of franchise, that they are
18 permitted -- particularly if you look at your 2011
19 ordinance, that they are permitted to provide service --
20 or that they're permitted to construct plant and provide
21 service within the city limits?

22 A. Well, again, from visiting with the city
23 attorney, I believe they're permitted and obligated.
24 Somebody has to supply power --

25 Q. Okay. But wouldn't the word "obligate" preclude

1 then anybody else from providing service in there and
2 therefore making it not non-exclusive?

3 A. No. I don't believe so --

4 Q. Okay.

5 A. -- but not a lawyer.

6 Q. And in fact, obligate probably doesn't actually
7 show up until the 2020 resolution for McFarland's
8 Addition. Would you agree?

9 A. You know, you're asking me a question I don't --

10 Q. Okay.

11 A. I haven't been through everything that's ever
12 been written on this.

13 Q. Okay. And understand, understand. I'm not
14 trying to pick on you. I just wanted to -- you know,
15 again, because obligate is a pretty strong word.

16 So who drafted the resolution relative to the
17 extension of the franchise agreement that was, I think,
18 April -- or August of 2019 -- or excuse me. This one
19 would have been April of 2020. The resolution to annex
20 was the August one. Do you recall?

21 A. I believe it was our city attorney. But I don't
22 know that for sure but -- because we've -- you know,
23 Steve Ekman is our city attorney and I consult him on
24 many things. I honestly don't remember, but I believe
25 it was him.

1 Q. Okay. Has Otter Tail helped you draft documents
2 relative to the Love's contest?

3 A. I -- I believe that they probably did help Steve
4 with some of the wording on this.

5 Q. Okay. And they also drafted the petition to
6 intervene on behalf of the City of Drayton as well; is
7 that correct?

8 A. I believe so.

9 Q. So was it the intent of the city with the 2020
10 resolution to basically extend off of the ordinance
11 that's dated back in 2011 granting Otter Tail a
12 franchise?

13 A. Could you say that again?

14 Q. So was it the intent -- do the 2020 -- does the
15 2020 resolution and the 2011 ordinance, are they tied
16 together?

17 A. I'm sorry, that sounds like a legal question to
18 me.

19 Q. Okay. But do they relate back to one another?
20 Are you, essentially, saying under the franchise we
21 granted you in 2011, we're further extending that
22 franchise? Would you agree?

23 A. Yes, I do.

24 Q. Okay.

25 A. I guess you could say that, yes.

1 Q. Okay. And are you aware that your 2011
2 ordinance actually subjects the franchise agreement and
3 the matter -- or in matters, essentially, to that extent
4 to the jurisdiction of the Public Service Commission?

5 A. Again, could you repeat that?

6 Q. And I apologize. I'm probably not phrasing it
7 very well.

8 Are you aware that the ordinance that was passed
9 in 2011 actually -- and maybe if I specifically state
10 it. In one section of that contract, it specifically
11 says that it's subject to any present or future laws of
12 a regulatory nature enacted by the State of North Dakota
13 or any amendment or addition to such laws and further
14 shall be subject to the rules and regulations laid down
15 by the Public Service Commission of the state of North
16 Dakota.

17 Would you agree that that phrase is inside the
18 2011 ordinance?

19 A. If you give me a moment so I can read it, I
20 will.

21 Q. Yes, I would gladly. And it's under section 9.

22 A. Okay. I've got to find it here.

23 (Pause)

24 A. Yes, it does say that.

25 Q. Okay. Thank you.

1 Now, are you also familiar with, essentially,
2 how the annexation process works?

3 A. Well, somewhat. I've only been part of one of
4 them.

5 Q. Okay. So, essentially, annexation can occur by
6 one of two modes. Either they petition to be annexed or
7 the city could petition to annex; is that correct?

8 A. That's correct.

9 Q. Okay. And is it your understanding that if, for
10 example, the city petitioned to annex, that,
11 essentially, the only voice that's going to be in the
12 room are the people that are being subject to the
13 annexation; is that correct?

14 A. Well, I think typically that's how it works
15 because they would be the only ones that may or may not
16 object to it.

17 Q. Okay. Are you aware of any provision that would
18 allow Nodak, at least as far as the annexation, to come
19 in and object or voice a vote or -- if they don't own
20 specific -- if they don't specifically own the property
21 sought to be annexed?

22 A. If I could expand on this a little bit. You
23 know, we talk about the city of Drayton. Well, you
24 can't confuse that with the city of Grand Forks or the
25 city of Fargo --

1 Q. And I apologize, Mr. Olson. I did ask a
2 specific question so if you could just answer the
3 specific question that I requested.

4 A. Anyone can come to our city council meeting and
5 voice their opinion on anything.

6 Q. Okay. But they would not specifically have a
7 vote that could veto the annexation; is that correct?

8 A. I believe that is correct.

9 Q. Okay. And in speaking with Mr. Walters, you
10 said that he told you they would have, potentially, a
11 cost savings of, like, \$30,000. Do you know where he
12 got the numbers that he was comparing in order to be
13 able to come up with that assessment?

14 A. I don't know. In one of the meetings we had
15 with Nodak, I know he requested some numbers from them.
16 So for me to tell you those were the numbers, I can't
17 tell you that.

18 Q. Okay. So you're not entirely sure where he got
19 -- where the difference was or how he came up with that
20 cost savings?

21 A. No, I am not.

22 Q. Okay. And if Love's had wanted Nodak to serve
23 this load, would you have asked Otter Tail Power to not
24 interfere?

25 A. Yes.

1 Q. Even though they hold the franchise, you would
2 have put your foot down and said not to interfere with
3 this particular load?

4 A. I most certainly -- if Love's would have chose
5 Nodak, I most certainly would have.

6 MS. RADERMACHER: Okay. I have no further
7 questions.

8 ALJ DAWSON: Mr. Johnson.

9 MR. JOHNSON: I don't have any questions, Your
10 Honor.

11 ALJ DAWSON: Commissioner Kroshus.

12 COMMISSIONER KROSHUS: Just one.

13 Good afternoon, Mr. Olson, or Mayor Olson, I
14 should say. Did either Nodak or Otter Tail Power ever
15 express a competitive advantage to you in terms of cost
16 of service to the truck stop?

17 THE WITNESS: No. When rumors to this first
18 started, they both contacted me wanting to provide
19 service, and I -- I told them both, talk to Love's,
20 because I thought Love's should decide who they want.
21 And, you know, I'm sure at the time that they both told
22 us -- told myself, you know, about their rates and their
23 quality and things like this. And I just thought they
24 were wasting their time because I wanted Love's to
25 decide.

1 COMMISSIONER KROSHUS: Okay. Fair enough. At
2 the January 6, 2019, meeting, was Otter Tail Power
3 present at that? Do you recall?

4 THE WITNESS: I do not recall.

5 COMMISSIONER KROSHUS: Okay.

6 THE WITNESS: I don't recall.

7 COMMISSIONER KROSHUS: Okay. I'm trying to --
8 and maybe you don't know, but from a timing standpoint,
9 following that meeting, about six weeks later, CEI
10 contacted Nodak and then, by June, had changed its mind,
11 or Love's had changed its mind on service provider.
12 Would you have any idea what triggered that? Or was it
13 just the impression of cost?

14 THE WITNESS: No, I wouldn't let -- what was
15 your other question before this? I'm sorry. Was that
16 about the June 10 meeting? Because I actually have the
17 minutes in front of me.

18 COMMISSIONER KROSHUS: The January 6 meeting of
19 2019.

20 THE WITNESS: No. Sorry. Then I do not have
21 those minutes.

22 COMMISSIONER KROSHUS: But I will ask, at the
23 June meeting, were either -- Nodak was present; is that
24 correct?

25 THE WITNESS: That is correct, yes.

1 COMMISSIONER KROSHUS: Was Otter Tail Power
2 present?

3 THE WITNESS: Not in the minutes it doesn't say
4 that.

5 COMMISSIONER KROSHUS: Okay. All right. I
6 don't have any other questions. Thank you, Mayor.

7 ALJ DAWSON: Commissioner Fedorchak.

8 COMMISSIONER FEDORCHAK: Thank you, Mayor. I
9 think your answers have been really thorough and the
10 questioning has covered everything that I was interested
11 in so I don't have any more questions for you. Thank
12 you.

13 ALJ DAWSON: Commissioner Christmann.

14 COMMISSIONER CHRISTMANN: Do you quarrel with my
15 understanding of the testimony that we heard this
16 morning that I believe it's a Cenex, some type of gas
17 station north of Highway 66, is operating and is, in
18 fact, in the city limits of Drayton?

19 THE WITNESS: It is in the city limits of
20 Drayton.

21 COMMISSIONER CHRISTMANN: Okay. And do they
22 have a franchise?

23 THE WITNESS: Does Nodak have a franchise?

24 COMMISSIONER CHRISTMANN: Nodak doesn't have a
25 franchise to serve that; correct?

1 THE WITNESS: Nodak -- I believe Nodak is
2 serving that.

3 COMMISSIONER CHRISTMANN: But they don't have a
4 franchise with the city, or do they?

5 THE WITNESS: No. That was -- see, they were
6 serving that before they were annexed in.

7 COMMISSIONER CHRISTMANN: Okay. And do you
8 provide water and sewer to them since they're in the
9 city, I presume?

10 THE WITNESS: That -- and that is why they want
11 to be annexed in.

12 COMMISSIONER CHRISTMANN: The Cenex did?

13 THE WITNESS: They're on rural water but they --
14 and they had a septic system and they wanted city sewer,
15 so they requested to be annexed in.

16 COMMISSIONER CHRISTMANN: Okay. And I think
17 that is my only question. But I do appreciate your
18 public service and compliment you. Looks like there's
19 pretty good deer hunting in the Drayton area.

20 THE WITNESS: You should see the wall behind
21 you.

22 COMMISSIONER CHRISTMANN: I'd like to.

23 UNIDENTIFIED SPEAKER: Turn that computer around
24 -- that camera.

25 (Simultaneous speaking)

1 UNIDENTIFIED SPEAKER: Well, that made my day.

2 ALJ DAWSON: Mr. Sanderson.

3 REDIRECT EXAMINATION

4 BY MR. SANDERSON:

5 Q. Just briefly, Mayor Olson. You were asked at
6 the end of cross-examination by Nodak's attorney some
7 hypotheticals about what you could or should have or may
8 have done. If Love's had wanted Nodak to serve, the
9 City of Drayton could grant Nodak a franchise to serve
10 within the city limits; correct?

11 A. I believe that's correct.

12 Q. And if the City of Drayton wanted specifically
13 Nodak to serve the Love's Truck Stop in McFarland
14 Addition, the City of Drayton could pass a resolution
15 authorizing it to serve there. Is that fair?

16 A. That is what I believe from visiting with our
17 attorney, Steve Ekman.

18 Q. Okay. But what we know, what -- and I'll take
19 you away from the hypotheticals here, Mayor Olson. At
20 no point in time has the City of Drayton ever granted
21 Nodak a franchise and has not passed a resolution
22 authorizing Nodak to serve Love's Truck Stop in
23 McFarland's Addition; correct?

24 A. That is correct.

25 MR. SANDERSON: No further questions.

1 ALJ DAWSON: Any further questions?

2 MS. RADERMACHER: I have nothing further.

3 ALJ DAWSON: Any further questions?

4 Seeing no further questions, you may step down
5 or turn off your monitor, whatever you like.

6 MR. SANDERSON: Thank you, Mayor.

7 ALJ DAWSON: I think we'll take a break right
8 now till about 25 minutes after the hour, based on that
9 clock right there. They're all different. Okay.

10 (Recess)

11 ALJ DAWSON: Well, we're back on the record and
12 it's 3:30'ish p.m.

13 And, Mr. Sanderson, your next witness, please.

14 MR. SANDERSON: Thank you, Judge. At this time
15 Otter Tail would call Steve Walters via teleconference.

16 ALJ DAWSON: Mr. Walters.

17 MR. WALTERS: Hello?

18 ALJ DAWSON: Hello, Mr. Walters.

19 MR. WALTERS: Yes, Sir.

20 ALJ DAWSON: Were you here for my previous
21 admonitions as to perjury?

22 MR. WALTERS: Yes.

23 ALJ DAWSON: So you understand what perjury is
24 and the penalties for it?

25 MR. WALTERS: Yes, Sir.

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

5 MR. WALTERS: Yes, Sir.

6 ALJ DAWSON: Mr. Sanderson, you may begin.

7 MR. SANDERSON: Thank you.

8 **STEVE WALTERS,**

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

11 DIRECT EXAMINATION

12 BY MR. SANDERSON:

13 Q. Good afternoon, Mr. Walters. Could you please
14 state your full name and business address for the
15 record?

16 A. Steven Walters. My business address is 10601
17 North Pennsylvania Avenue, Oklahoma City, Oklahoma,
18 73120.

19 Q. And whom are you employed by?

20 A. Love's Travel Stops.

21 Q. And can you explain briefly to the Commission
22 what Love's Travel Stop does and your business?

23 A. Yes, Sir. Love's is a privately-owned company
24 that was started in 1964 by Tom Love. So we've been in
25 business now for 57 years. We're still owned by the

1 same family. Three of his four children still run the
2 company. And we even have what we refer to as a gen
3 three, which would be his grandchildren coming up in the
4 company now as well playing different roles.

5 Overall, we're -- we're in the top 20 of Forbes
6 privately-held companies. We have over 550 stores
7 across the United States. And as of now, we employ
8 about 30,000 people in 41 different states.

9 Q. And what is your position with Love's?

10 A. My title is real estate project manager.

11 Q. And can you just explain to the Commission what
12 your job responsibilities entail?

13 A. Yes, Sir. I identify sites for potential new
14 development. And then once they're identified and we
15 decide to move forward, I work with the cities or
16 counties, whatever government agency I need to work
17 with, to get approvals and permits and proper zoning and
18 all that kind of stuff we need so we can get to the
19 construction phase.

20 Q. Okay. And, Mr. Walters, in your position as
21 project manager for Love's, what geographical area do
22 you serve?

23 A. I worked with Love's now for a little over eight
24 years, and during those eight years I've worked in 14
25 different states. But right now my main focus is what I

1 refer to as the northern states of North Dakota, South
2 Dakota, Wyoming, Montana, Nebraska, Idaho. And I'm
3 still working in some other states, but my main focus
4 right now is up north.

5 Q. Okay. And generally, can you explain the
6 different factors Love's considers when selecting a
7 location for a new facility?

8 A. Yeah. The first thing we do is we always listen
9 to our customers because, obviously, they're the ones
10 that are going to use us. They are real good at letting
11 us know where there's gaps in services for the
12 professional truck drivers. And then, you know, we look
13 at that and see what our volumes are.

14 And then we -- we'll physically drive up and
15 down the interstate in those areas and see if we can
16 find a -- find a place to build.

17 So what I look for, in looking for a place to
18 build, is if there's property available, if that
19 property is available, is it actually for sale and can
20 it actually be developed on?

21 And then also we look at, one of the big things
22 for us is we look at public utilities, because once we
23 get into doing lagoons and wells, there's all kinds of
24 government regulations and monitoring and that kind of
25 stuff that we don't want our operators to have to deal

1 with. So we prefer to be on public utilities whenever
2 we can.

3 Q. And, Mr. Walters, we're here today regarding a
4 facility, Love's facility, that's being constructed near
5 Drayton, North Dakota. Are you familiar with that
6 project?

7 A. Yes, Sir.

8 Q. What has been your involvement with the Drayton
9 Love site?

10 A. I've been involved with the Drayton Love site
11 since 2018 from identifying the site to where we are
12 today with this hearing.

13 Q. And can you just kind of give the Commission a
14 timeline of Love's, when you began exploring the Drayton
15 location?

16 A. Yes, Sir. My first trip in that area was back
17 in, I believe, June of 2018, and so that would have
18 probably been the first time that -- well, not probably.
19 I know that was the first time because I have emails to
20 the broker asking him to investigate properties in that
21 area, and that was June of 2018.

22 Q. And can you explain how Love's selected the
23 property location near Drayton?

24 A. Yes. Again, you know, we listen to our
25 customers. There was a big gap in services for truck

1 stops, whether it be us or our competition, from Canada
2 down to Grand Forks. So I've driven that stretch of
3 I-29 several times, looking at the off ramps and the
4 different communities in that area.

5 There are, you know, other options other than
6 Drayton, except those options are -- have some
7 hindrances to development, whether it be railroad
8 tracks, whether it be wetlands, but the biggest
9 hindrance is a lot of those small cities don't have the
10 public utilities that can handle our capacity. So
11 that's how we ended up in Drayton.

12 Q. Okay. When you narrowed in and selected the
13 Drayton location, was that property located in the
14 Drayton city limits?

15 A. When I first found the property, I didn't know
16 at the time whether it was or wasn't, but after we
17 started investigating, that I quickly learned that it
18 was not in the city limits.

19 Q. Okay. And just for the record, Mr. Walters,
20 throughout the course of this testimony at this hearing,
21 that property's been referred to as the McFarland's
22 Addition property. Are you familiar with the
23 McFarland's Addition?

24 A. Yes. Yes, I am. The reason it's named that is
25 because the gentleman that sold it to us, his last name

1 was McFarland. The property had to be re-platted in
2 order for us to take ownership of the property. So we
3 couldn't re-plat the property on our behalf because we
4 didn't own the property. So the way the city ordinances
5 were written, the owner had to make that request, and so
6 he made that request on our behalf, and that's how the
7 McFarland's Addition came about.

8 Q. So if I refer to that property as the McFarland
9 Addition, you'll understand that's the property Love's
10 selected and intends to build their facility on near
11 Drayton?

12 A. Yes, Sir.

13 Q. Okay. You mentioned that Love's, you know, was
14 looking at having the property annexed into the city
15 limits. Why does Love's prefer to have property located
16 in city limits?

17 A. Well, there's multiple reasons. As I've said, I
18 worked in -- for eight years now, done probably close to
19 40 or 50 different stores. And I would say 99 percent
20 of the time, a city is not going to let you use their
21 public utilities unless you're in the city limits, which
22 makes sense, because we're taxing those services and
23 they want something in return, and that something in
24 return is tax dollars.

25 In Drayton's case, when we first met with them,

1 I learned that they did have public utilities and that's
2 the -- and they did have the capacity to serve our
3 needs, and so we became annexed into the city so we
4 could utilize those utilities.

5 Q. Okay. Is --

6 A. And then the other thing is, is, you know, truck
7 stops have a bad wrap, you know, and probably rightfully
8 so from some of the shenanigans that took place in the
9 '70s and '80s. So we strive to be a good corporate
10 citizen whenever we come into a community. And for us,
11 what that means is we don't want to be a detriment in
12 any way.

13 So as the mayor testified earlier, there was a
14 little bit of tax abatement money, but it was -- I don't
15 think it was double digit money, to be honest with you.
16 It was minimal. And, quite frankly, you know, we didn't
17 need that so we didn't take it.

18 The other thing is, is my understanding from the
19 mayor, after we did further investigation, was that we
20 did not have to annex and we could still use their
21 utilities with the way their ordinances were written.
22 And, again, that's just not the way Love's does
23 business.

24 After our first official meeting with the City
25 of Drayton, which I believe has been referred to as the

1 January 6 meeting, the mayor asked if I would hold a
2 meeting later in the month to have the public -- have
3 the citizens come to the meeting in a public setting,
4 which, as he mentioned, was held at the school. And at
5 that time, I had already committed to the city that we
6 would be willing to annex and wanted to annex because,
7 at the public meeting on the 26th, I believe it was, I
8 gave a slide presentation showing the tax dollars that
9 would help benefit Drayton.

10 Q. And was Love's, did you make the decision to
11 have that property annexed into the city?

12 A. Myself, did I make the decision myself?

13 Q. Well, I mean, did Love's want or request that
14 property be annexed into the city?

15 A. Yes. We made the request. But as I said, at
16 the time I think -- I have to go back and look, but I
17 think Mr. McFarland may have still owned the property at
18 that time so he may have had to do it on our behalf.
19 But yes, it was nobody else's decision.

20 I have -- we have a, I think it's a five-page
21 document -- it fluctuates from four to six pages
22 sometimes, you know, formatting and all that crap -- but
23 of questions that we ask a city whenever we first start
24 development. Because that's the first step we take, is
25 we go sit down with the city decision-makers, the

1 engineers, zoning officers, whatever they may be, and we
2 go over a litany of questions.

3 And that meeting took place, again, I believe
4 it's what's being referred to as the January 6 meeting.
5 And in that meeting notes that I have, it shows that we
6 discussed annexation in that meeting.

7 Q. And let me ask you this, Mr. Walters. Was Otter
8 Tail ever involved in Love's decision to have the
9 McFarland's Addition property annexed into the city of
10 Drayton?

11 A. No, not at all. Because like I said, we -- we
12 had that meeting on January 6, and I hadn't even spoken
13 to Nodak or Otter Tail, or my engineers hadn't spoken to
14 anybody yet, because we didn't know who to speak to at
15 that time.

16 The mayor and I had had a conversation between
17 the two of us, and I believe it was on a phone call -- I
18 know it was on a phone call because I wasn't there
19 personally -- and we discussed the potential for
20 annexing. And in that January 6 meeting, which was an
21 official City of Drayton meeting, it was brought up, and
22 I committed to the city council and to the mayor at that
23 time that we would annex. So there's no way that Otter
24 Tail or Nodak was involved because we didn't know who to
25 talk to.

1 Q. Now, I want to ask specifically about the
2 facility Love's intends to construct. And I know you're
3 not an engineer, but are you generally familiar with the
4 electrical needs Love's requires for that site?

5 A. Yes, Sir. Just enough to be dangerous.

6 Q. Okay. What electric service does Love's need
7 for their proposed truck stop near Drayton?

8 A. I know we need three-phase electrical.

9 And through some of the testimony that I've
10 listened to today, I did reach out to our supervisor of
11 construction and asked if we ever did the -- use
12 single-phase electric and then have phase converter, and
13 he said in no circumstance would we ever do that because
14 of the extra cost it would add to our utility bill and
15 then the potential for issues of having downtime.

16 Q. And what --

17 A. That's about the extent of my knowledge.

18 Q. Okay. Well, and what you, I believe, were just
19 referencing was the potential to run an extension off
20 the single-phase line on the south side of McFarland's
21 Addition -- or excuse me -- Nodak's single-phase line on
22 the south side. Was that something that Love's
23 considered at one point?

24 A. No, never. And I -- it was a learning question
25 for myself when I heard that today. And again, I'm not

1 saying Nodak said that was an option. I'm not saying
2 Otter Tail said that was an option. I just heard
3 discussion about it today and it was just a learning
4 question. I wanted to know if we ever did it, because I
5 had never heard of that before.

6 Q. Okay. Now, you mentioned earlier that when you
7 made the decision to annex the property, you hadn't
8 spoken to either -- either to Nodak or Otter Tail. At
9 some point after that January meeting, did
10 representatives of Love's reach out to the electric
11 utility providers in the area to discuss service for
12 that project?

13 A. Yes. And that's what the role my engineers
14 take. And the purpose of that meeting is to find out
15 who provides electric, you know, who provides phone
16 service, just all that good stuff. And maybe a city has
17 a relationship with a traffic engineer for the DOT of a
18 state.

19 So we got the information. And yes, one of my
20 engineers reached out. That meeting was at the end of
21 January so I'm guessing it would probably be in February
22 they reached out to them.

23 Q. And can you just explain what Love's did to
24 investigate electric suppliers?

25 A. You mean after we found out who we could use --

1 Q. Yes.

2 A. -- or what we did to make that choice?

3 Yeah, we have -- we have a bunch of internal
4 departments. We have utility providers -- I mean, we
5 have a utility department and, you know, they look and
6 try to see what rates are between the two providers,
7 or three providers, whatever the case, two in this case.
8 So they're doing that.

9 Simultaneously, my engineers are working with
10 the engineers of, like, Nodak and Otter Tail, in this
11 case, to find out if they can provide -- service our
12 load, if they -- what it's going to take to get there,
13 you know, all that good stuff.

14 So my role is more of a -- kind of a delegator
15 and making sure that stuff is being done once I delegate
16 it. And the engineers dig down into the minute points,
17 and the utility department, you know, they dig into it
18 from an accounting side, and then they get me the
19 information.

20 Q. Okay. And with respect to this project, your
21 understanding is Love's would have been the one who
22 reached out to Otter Tail to discuss electric service at
23 this site?

24 A. Yes. Yeah. Definitely.

25 Q. Did Love's also contact Nodak Electric regarding

1 electric service?

2 A. Yes.

3 Q. And can you just explain to the Commission,
4 based upon your -- based on the company's, Love's,
5 contact with both of those, did Love's have a preference
6 as to which company would provide electric service?

7 A. At the beginning, we don't have a preference
8 because I don't go into -- you know, into the
9 investigation with any preconceived ideas. You know, I
10 make assumptions that whatever service providers are
11 there, they're both good or they wouldn't probably be in
12 business. Having said that, once we got into the
13 investigation further, then my preferences changed to
14 Otter Tail for multiple reasons.

15 Q. And can you just explain to the Commission what
16 those multiple reasons were?

17 A. Yeah, definitely. The meeting that the Nodak
18 CEO discussed earlier, the phone call meeting that
19 myself and Mayor Olson was on, it was a meeting that was
20 held after I had requested Otter Tail to speak with
21 Nodak. And the reason I requested Otter Tail speak with
22 Nodak was because I didn't want to be in the middle of
23 this crap.

24 And, you know, it seemed like it was a -- kind
25 of a tug-of-war between who was going to give us our

1 service, and I just wanted service so I could get a
2 store open. So I asked -- I asked the Otter Tail rep
3 if, since he had a relationship with Nodak, if he
4 wouldn't mind holding that first meeting to see if they
5 could get Nodak to step away and let us have our
6 service.

7 And once that didn't go well, it was decided
8 that the mayor and I would have a meeting in hopes that
9 Nodak would hear it straight from me that we wanted
10 Otter Tail to provide our service.

11 And, you know, quite frankly, that meeting did
12 not go well at all, and it didn't go well in regards to
13 the fact I didn't get what I wanted. It didn't go well
14 because of the -- the way that I felt bullied.

15 Our legal team had already had documents, had
16 already used a -- I believe they used a local counsel in
17 South Dakota as well to dive into this issue because I
18 wanted to know, is Otter Tail telling me the truth? Is
19 Nodak telling me the truth? What's the real deal here?
20 And their take on it was that we had our choice of who
21 we could use based on the legal stuff they reviewed.

22 So when I explained that to the -- to Mylo --
23 I'm sorry, I can't remember Mylo's last name -- I
24 explained that to Mylo, the meeting turned pretty
25 contentious and, you know, I told him that I wasn't

1 going to be bullied into using them. And, you know, he
2 -- he didn't respond well, in my opinion, so my thought
3 there immediately is if the CEO of a company, you know,
4 treats potential customers this way or somebody that
5 they want to be a customer, even though I already said I
6 didn't want to be their customer, he was still trying to
7 lure our business and I didn't want any part of him.

8 He had testified earlier that we requested rates
9 from them after that meeting, at the end of the phone
10 call. He's 100 percent correct that -- that it was
11 requested, but the only reason that I requested those
12 rates is because he told me that the rates that were
13 posted would not be the rates that we would pay, so my
14 response was, well, send me your rates then. So that's
15 how that went down.

16 I was not interested in using them. We had
17 already done research. Obviously, I wasn't interested
18 in using them at the beginning of the phone call because
19 that's the whole reason of the phone call. So there --
20 it was a customer service issue from that standpoint,
21 you know, that's kind of where it came from, and then,
22 obviously, the cost savings to us over the long haul.

23 You know, I've heard testimony today about
24 Nodak's not going to charge us anything upfront and it's
25 going to be a \$19,000 investment. Well, okay, \$19,000

1 is a lot of money, but we're investing 12 to \$15 million
2 to build a location in Drayton, North Dakota, and we're
3 going to be there for 20, 25 years, and we have to pay
4 rates over 25 years. And the rates that Nodak charges
5 versus the rates that Otter Tail charges, it would be
6 cheaper for me to go with Otter Tail and have to pay
7 that \$19,000 or not pay the \$19,000 upfront.

8 So it was just a litany of things that came
9 about, and that's why we chose Otter Tail.

10 Q. Okay. And, Mr. Walters, at any point did Love's
11 indicate or would it be acceptable for Love's to accept
12 interruptible service for that location?

13 A. No, never. Even to the extent -- you know, I
14 mean, we've all seen the reports a couple months ago,
15 the bad weather and the electrical grid shutting down.
16 And during COVID, the trucking industry was deemed an
17 essential business by the Government, which Love's was
18 looped into that, and our competitors as well, not just
19 Love's, but the other truck stops were as well, because
20 we have to be open 24/7/365.

21 So the thought of this reduced rate by -- I
22 can't remember exactly how they worded it, but no,
23 that's no interest because we have to be open and
24 running 24/7/365.

25 Q. And during those conversations with Nodak, did

1 you make it clear to them that Love's preferred to
2 receive service from Otter Tail?

3 A. Yes, very clear.

4 Q. And, Mr. Walters, what is the current status of
5 the Drayton Love's project?

6 A. We did some underground work last year. That
7 property is very wet and so we had to do some
8 underground work as far as our drainage and that kind of
9 stuff. And then the property had to -- had some
10 compaction issues so we had to do some special
11 compaction and let it set for a while. So we let it
12 set. And knowing this issue was still ongoing, it
13 didn't hurt us to let it set over the winter because we
14 wouldn't have built during the winter anyway, but also,
15 we had to kind of slow things down because not knowing
16 where our electrical service was coming from.

17 Q. And what is your estimated completion time for
18 the Love's project near Drayton?

19 A. Well, barring, you know, the outcome of the
20 hearing and knowing who our provider is going to be and
21 however long that takes, we would like to get started
22 breaking ground again here at the beginning -- end of
23 April, beginning of May time frame, and hopefully, it
24 will be open by October, you know, weather permitting.

25 Q. Mr. Walters, I have no further questions at this

1 time. Thank you.

2 A. Thanks.

3 ALJ DAWSON: Ms. Radermacher.

4 MS. RADERMACHER: Thank you.

5 CROSS EXAMINATION

6 BY MS. RADERMACHER:

7 Q. Hello, Mr. Walters.

8 A. Hello. How are you today, Ma'am?

9 Q. Good. And yourself?

10 A. Doing well. Thank you.

11 Q. Is it warm down there?

12 A. It's about in the 50s today so it's not too bad.

13 Q. Okay. I'm just going to ask you a couple of
14 brief questions.

15 Now, you indicated that, typically, it's
16 preferable that you are inside city limits to be able to
17 receive some city utilities, but do you have Love sites
18 that are not located in city limits?

19 A. Yes.

20 Q. And would you say there's -- do you have sites
21 in North Dakota that are not inside city limits?

22 A. Let's see. Williston is in the city limits.
23 Valley City is in the city limits. Fargo is in the city
24 limits. I would say no to that, to the best of my
25 knowledge.

1 Q. Okay. But you do have sites throughout the
2 United States that are not directly in city limits?

3 A. Yes.

4 Q. Okay. Now, you indicated that there were
5 conversations that took place with Nodak, but did you
6 ever have conversations where Nodak was -- where it was
7 just you and Nodak Electric?

8 A. No. It was either myself and the mayor that was
9 usually on the phone with Nodak.

10 Q. Okay. And why was the mayor involved in some of
11 those conversations?

12 A. Well, quite honestly, the thought process was,
13 was that we hoped that once Nodak heard from the mayor
14 that they supported this decision and that Love's wanted
15 this decision, that Nodak would accept that decision.
16 But obviously it didn't turn out that way because we're
17 here today.

18 Q. Okay. But do you understand at least or
19 appreciate Nodak's position in that they have facilities
20 that are located on the property you purchased and so
21 they're just trying to protect their territory?

22 A. I understand it from that regards, but, you
23 know, I've heard testimony today from Nodak that they
24 need to protect their investment. Like I said, the way
25 Love's likes to do business is we believe the city needs

1 to protect their investment, and at that point their
2 investment was the money they put into their public
3 utilities, which is why Drayton got chosen over some of
4 the other cities between Grand Forks and Canada.

5 Q. Okay.

6 A. And then just like both of those entities need
7 to protect their investment, Love's is a business.
8 Yeah, we're big and we've been in business for 57 years,
9 but we still have a return on investment we need to
10 make, and it's a significant cost difference for rates
11 between the two.

12 Q. Okay. And when you say --

13 A. So when --

14 Q. And I apologize, because I asked a specific
15 question and you're kind of going off topic.

16 So when you say that there's a rate difference,
17 did Otter Tail Power ever give you a hypothetical cost
18 of what their service would be?

19 A. A hypothetical cost based on our usage or like a
20 rate --

21 Q. Yes. Well, just based on a rate or even based
22 on what your annual usage would be.

23 A. They may have given me that. I know they gave
24 me what our rate would be, and the same as -- as Nodak.
25 Nodak gave me what their rates would be. And I gave

1 those to our utility and accounting department and let
2 them look at it.

3 Q. Okay. And so was there ever a -- did Otter Tail
4 ever give you a hypothetical what they thought Nodak
5 Electric rates might be?

6 A. I think what they gave me may have been what was
7 posted, because their estimate was just a little bit
8 higher of what -- what our estimate came out to be.

9 And again, just like Nodak, Otter Tail doesn't
10 know what our other stores use in utilities. They can
11 have their best guess. But what my utility department
12 and accounting department did was they took stores of
13 the same size and usage and -- I mean, they took stores
14 of the same size, took that usage, applied the rates,
15 and came out with a number.

16 Q. Okay. But do you realize that to some extent,
17 you know, cooperatives have a little bit of leeway with
18 some of their rates? Maybe there's a power factor
19 charge, for example, that the board would agree to
20 waive? Did you at any point sit down with Nodak and see
21 what they're willing to do on their rates?

22 A. As I testified earlier, the phone call I had
23 with the CEO of Nodak, he made it very clear that the
24 rates that I saw would not be the rates that I charged,
25 and I told him to send me what rates he would charge me

1 and he did that. So -- so I would say he had his
2 opportunity to give me his best price and the chips fell
3 where they fell.

4 Q. Okay. And so according to the mayor of Drayton,
5 he said, well, it was in excess of \$30,000 difference.
6 Based on the rates I've seen between what Otter Tail
7 proposes and what Nodak Electric proposes, how do you
8 come up with that math?

9 A. Again, it was -- like I said earlier, the rates
10 that were given to us by Nodak and the rates that were
11 given to us by Otter Tail, and our accounting and
12 utility department looked at actual bills of -- or
13 actual usage of stores of the same size and structure as
14 the store we're building in Drayton and that's how they
15 came up with the math. I mean, I'm not -- I didn't do
16 the analysis myself, but I mean that's common sense of
17 how they would do that.

18 Q. Okay. But just to -- but between you and I, I
19 mean, like you never actually sat down with Nodak
20 Electric and either one of you lay the chips on the
21 table in a face-to-face conversation without somebody
22 else present. Would you agree?

23 A. No, I don't agree that -- that they -- that that
24 happened that way, because I believe the email was sent
25 directly to me from Mylo, and I don't think he copied

1 anybody else on what my rates would be.

2 Q. No. So what I'm getting at, though, is did --
3 at any point, did you sit down at the table or in a
4 conference -- face-to-face conference with Mylo or
5 anybody else from Nodak Electric to sit and discuss, you
6 know, this matter without the mayor present or an Otter
7 Tail representative present?

8 A. No, we didn't do that.

9 Q. Okay. Did Otter Tail ever indicate to you how
10 they intend to extend service to the Love's site?

11 A. They probably did to me personally, but again,
12 I'm not an engineer. I know that my engineers have been
13 working with their engineers so there has been some
14 discussions. I can't tell you specifically what that
15 is, though.

16 Q. Okay. So you don't know whether or not there
17 was any route, specific route, that was picked in order
18 to provide service to the site?

19 A. I don't -- I know there has been a route picked.
20 I'm not sure exactly how it's going to get there from
21 point A to point B. I know that it has to be bored
22 under I-29, and I believe they're using the same boring
23 that we have to use to get the utilities to that side of
24 the interstate as well.

25 Q. Okay.

1 A. Now, I could be wrong, but I'm pretty positive
2 they're using the same boring.

3 Q. Okay. And so did they ever provide what your
4 cost of extension would be or what their cost of
5 extension would be to that site?

6 A. Yeah, I'm sure they looked at that, you know --

7 Q. But have they -- yeah. Have they ever provided
8 you a dollar amount?

9 A. I don't know the answer to that one. I mean,
10 this has been going on for what, three years now, so I
11 don't know the answer to that one.

12 Q. Okay. And you indicated that there's kind of a
13 difference between rates, but do you realize that rates
14 are subject to change either -- you know, on a regular
15 basis, either by the cooperative or by the IOU?

16 A. Oh, I mean, definitely. Like I said, we have
17 550 stores so been in business 57 years. We understand
18 a lot of that. But I also understand that I asked Mylo
19 to send me what my rates were and he sent them, and like
20 I said, the chips fell where they fell.

21 MS. RADERMACHER: Okay. I have no further
22 questions.

23 ALJ DAWSON: Mr. Johnson.

24 MR. JOHNSON: No questions.

25 ALJ DAWSON: Commissioner Kroshus.

1 COMMISSIONER KROSHUS: Good afternoon,
2 Mr. Walters. Just one question.

3 Did you reach out -- and you may have said this
4 so I apologize. Did you reach out to Otter Tail Power
5 or did they reach out to you in terms of a service
6 agreement, a potential service agreement?

7 THE WITNESS: It would have probably been my
8 engineers, would have probably discovered that Otter
9 Tail had electricity in that area. So when you say, did
10 you reach out, Steve Walters probably didn't do that,
11 but somebody on behalf of Love's did. Yes.

12 COMMISSIONER KROSHUS: Okay. All right. Thank
13 you. No other questions.

14 ALJ DAWSON: Commissioner Fedorchak.

15 COMMISSIONER FEDORCHAK: Thank you, Mr. Walters.
16 I don't have any questions for you. Thanks.

17 ALJ DAWSON: Commissioner Christmann.

18 COMMISSIONER CHRISTMANN: I think when one of
19 the attorneys, and I don't remember which it was, was
20 maybe probably seeking a comparison, you had indicated
21 you thought that the Love's Truck Stop at Williston was
22 in city limits. Do you know, though, if that's serviced
23 by the cooperative up there or by the investor-owned
24 utility?

25 THE WITNESS: I don't know the answer to that.

1 I'm sorry.

2 COMMISSIONER CHRISTMANN: But as an
3 organization, have you ever, like, kind of analyzed, is
4 there a significant distinction that you find between
5 your costs of electricity in cooperative-serviced truck
6 stops as opposed to the investor-owned utility truck
7 stops?

8 THE WITNESS: I'm sure somebody internally has.
9 We're always looking at cost-savings measures. I
10 personally haven't. I haven't heard of anything.

11 You know, our stance through this whole process,
12 because I've kept my VP and I've also kept my -- my VP
13 in the loop on everything. Mr. Love knows a little bit
14 about it. But the stance from our VP is, is for me to
15 use the -- have the investigation done. Like I said,
16 I'm a delegator. So it was either accounting, utility
17 department, or my engineers were doing something for me
18 and looking at stuff. And his direction to me was find
19 the provider that's going to give us the best service
20 and -- and the least expensive rates. And if I felt
21 comfortable with it, then that's who we go with.

22 COMMISSIONER CHRISTMANN: Perfect segue. You
23 must have imagined my next question.

24 So when you say best service, did you reach your
25 conclusion solely on your analysis of price, or were

1 there reliability issues?

2 THE WITNESS: It's hard for me to say that there
3 were reliability issues for either partner, whether it
4 be Nodak or whether it be Otter Tail, simply because I
5 don't -- I've never used them so I can't speak to that
6 personally.

7 Like I said, after the conversation with the
8 CEO, I was pretty turned off by Nodak at that point, but
9 when I gave the information to our utility and
10 accounting department, they had no -- they had no
11 concept of that conversation. I just sent them the
12 information and told them -- asked them to get me the
13 rates and who would be the best rate provider.

14 COMMISSIONER CHRISTMANN: Okay. So there's no
15 underlying reliability study or anything like that at
16 play here, it's --

17 THE WITNESS: (Indiscernible)

18 COMMISSIONER CHRISTMANN: -- your discussions
19 and price?

20 Okay. And will this truck stop have a EV
21 charging station, or multiples?

22 THE WITNESS: No, it will not. I know that was
23 alluded to earlier by Nodak, and that conversation was
24 100 percent accurate. At the beginning there was a
25 little bit of discussion about that internally with

1 Mr. Love, and then -- I can't remember exactly what
2 happened, but something had taken place with some
3 government regulation or something and it kind of
4 changed our stance on us doing the EV stuff.

5 COMMISSIONER CHRISTMANN: Leave it to the
6 government, huh?

7 (Laughter)

8 COMMISSIONER CHRISTMANN: Do you put them in at
9 some of your stations or --

10 THE WITNESS: (Indiscernible)

11 COMMISSIONER CHRISTMANN: -- is that something
12 you haven't done yet?

13 THE WITNESS: I'm sorry, my phone -- my thing
14 was cut out. I think I interrupted you. I'm sorry, go
15 ahead.

16 COMMISSIONER CHRISTMANN: Or is that area you
17 haven't ventured into yet?

18 THE WITNESS: No. We have some in California
19 and Las Vegas, I know there's some that have EV
20 stations.

21 That's a pretty significant investment. You
22 know, each one of those stations is about \$250,000. So
23 when you look at putting in four of those, I mean,
24 you're looking at another hundred thousand dollars
25 you're adding to the bottom line, and right now there's

1 just not a lot of EV cars on the road to make up for
2 that.

3 COMMISSIONER CHRISTMANN: Does that make a
4 difference in what electric service you would set up or
5 what you're doing here would be sufficient, other than
6 the bottom line?

7 THE WITNESS: I'm -- yeah, I'm not -- from an
8 engineering perspective, I can't answer that for sure.
9 I mean, I'm sure it would obviously have an increase on
10 the load and the needs, but I -- I don't know the answer
11 to that.

12 COMMISSIONER CHRISTMANN: Okay. I have no other
13 questions, but I will just say my brother in North
14 Platte will be pleased that you identify Nebraska as a
15 northern state.

16 (Laughter)

17 THE WITNESS: Well, I'm from the South so it's
18 anything north of me is a northern state.

19 ALJ DAWSON: Mr. Sanderson.

20 MR. SANDERSON: No. I have no further
21 questions.

22 ALJ DAWSON: Any further questions?

23 MS. RADERMACHER: My mic is also dead, but I
24 have no further questions.

25 ALJ DAWSON: Okay. I see no further questions

1 so you may step down.

2 Mr. Sanderson.

3 MR. SANDERSON: Thank you, Mr. Walters.

4 Judge, at this time Otter Tail would call Tyler
5 Jacobson.

6 ALJ DAWSON: Mr. Jacobson.

7 Mr. Jacobson, you were here for my previous
8 warnings as to perjury?

9 MR. JACOBSON: Yes.

10 ALJ DAWSON: So you understand what perjury is
11 and the penalties for it?

12 MR. JACOBSON: Yes.

13 ALJ DAWSON: Understanding so, do you promise or
14 swear that the testimony that you're about to give will
15 be the truth, the whole truth, and nothing but the
16 truth?

17 MR. JACOBSON: Yes.

18 ALJ DAWSON: Mr. Sanderson.

19 MR. SANDERSON: Thank you, Your Honor.

20 **TYLER JACOBSON,**

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

23 DIRECT EXAMINATION

24 BY MR. SANDERSON:

25 Q. Mr. Jacobson, could you please state your full

1 name and business address for the record?

2 A. Tyler Jacobson.

3 Q. And whom are you employed by?

4 A. Otter Tail Power Company.

5 Q. And what is your position with Otter Tail?

6 A. Senior area engineer.

7 Q. And could you briefly describe the job
8 responsibilities for senior area engineer?

9 A. Yeah. I manage transmission and distribution
10 projects across my service territory.

11 Q. And what is your service territory?

12 A. Northwestern Minnesota and northeastern North
13 Dakota.

14 Q. And is the city of Drayton within your
15 geographical service territory?

16 A. Yes.

17 Q. Okay. Could you briefly provide the Commission
18 with your educational background?

19 A. I went to the University of North Dakota for
20 mechanical engineering.

21 Q. And after graduating from the University of
22 North Dakota, what's been your work experience?

23 A. Right out of school I worked for a food
24 processing company and we designed food processing
25 conveyors. After that, I was a hydraulic fracturing

1 engineer for a number of years. After that, I got on
2 with Otter Tail and designed substations for several
3 years.

4 Q. And how long have you been working for Otter
5 Tail?

6 A. Since 2016.

7 Q. Okay. And as part -- you indicated as part of
8 your role and responsibility as senior area engineer,
9 you design line extensions for Otter Tail?

10 A. Yes.

11 Q. Now, are you familiar with the proposed Love's
12 Truck Stop facility near Drayton?

13 A. I am.

14 Q. And can you explain your involvement with this
15 project?

16 A. Our operations manager was part of the initial
17 correspondence for the project, that he explained it to
18 me and we (indiscernible) the project together, and both
19 of us decided that this is -- would be the best way to
20 serve it. Since then, you know, we've -- of course,
21 it's been on a standstill.

22 Q. Now, before we begin discussing the specific
23 project, what's been marked and admitted as an exhibit
24 in this case is Otter Tail Exhibit 4, and it's a map of
25 the Drayton area and the McFarland's Addition. Did you

1 prepare this document?

2 A. Yes.

3 Q. Okay. And you're familiar with the contents of
4 what's contained on Exhibit 4?

5 A. I am.

6 Q. Okay. Do you have a copy of Exhibit 4 in front
7 of you?

8 A. No, if you don't mind.

9 Q. Yeah, I apologize.

10 UNIDENTIFIED SPEAKER: I was not provided one.

11 MR. SANDERSON: Okay. Do you have access to the
12 -- we filed it with the Commission. Would you have
13 access off that?

14 No? Not a problem.

15 May I approach, Your Honor?

16 ALJ DAWSON: Yes.

17 MR. SANDERSON: Thank you.

18 BY MR. SANDERSON:

19 Q. Mr. Jacobson, I've handed you what's been marked
20 as Otter Tail Exhibit 4. Can you just kind of walk the
21 Commission through what's contained on that exhibit?

22 A. Yeah. So on the right side of the interstate
23 shows some transmission line and distribution line owned
24 by Otter Tail as well as in the yellow box -- I guess no
25 one else can --

1 THE WITNESS: Can you guys see? Or do you guys
2 have copies of it?

3 A. In the yellow box is where Nodak's underbuild
4 is, single-phase underbuild is on our transmission line.
5 The red line that runs east and west is Nodak's
6 single-phase underground line. And then the green box
7 encompasses our proposed extension to serve the new
8 transformer.

9 Q. Okay. And can you explain to the Commission how
10 Otter Tail proposes serving the proposed Love's facility
11 in McFarland Addition?

12 A. Yeah. Basically, if you look at our -- at the
13 green box I have drawn out, on the far right side of it
14 there's an existing riser pole. Right there we would
15 install a junction box, and then bore underneath the
16 interstate all the way to the transformer location and
17 install a transformer.

18 Q. Now, currently, does Otter Tail serve any
19 customers in McFarland's Addition?

20 A. We do not.

21 Q. Okay. What type of service did Love's request
22 for the McFarland's Addition facility?

23 A. Three-phase service 120/208.

24 Q. Now, you've heard some testimony -- you've been
25 in the room today; correct?

1 A. Correct.

2 Q. You heard some testimony from a Nodak witness
3 regarding permitting for boring under I-29?

4 A. Yes.

5 Q. Do you recall that testimony?

6 A. I do.

7 Q. Can you explain to the Commission, has Otter
8 Tail obtained permits for boring under I-29?

9 A. Yeah. Typically, we will reach out internally
10 to get that process moving forward for permitting, in
11 this case, before we'd even order material. So yes.

12 Q. And when did Otter Tail obtain those permits?

13 A. It looks like May 2020.

14 Q. Okay. And are those -- were those permits
15 extended into the present year, 2021?

16 A. Yes, (inaudible) an extension.

17 Q. Now, you also heard some testimony about boring
18 and, you know, what it is. Just describe from your
19 experience, in designing facilities, the use of boring.

20 A. Yeah. So in my experience, boring is a very
21 common practice. It's more common to bore than it is to
22 plow in a facility like this even if there's one
23 roadway. Typically, by the time you set up all the
24 equipment to bore, even if it was a 40-foot roadway, it
25 would be easier just to continue boring several hundred

1 more feet and finish the job versus trying to save --
2 re-set up and save a couple dollars per foot and plow.
3 So this is a very straightforward, common practice that
4 we see all the time.

5 Q. And do you typically, in your projects, do more
6 boring than you do trenching?

7 A. We do.

8 Q. Okay. Are there any NESC regulations that
9 prohibit boring under I-29?

10 A. There are not.

11 Q. And is boring under a roadway something that
12 Otter Tail does in North Dakota?

13 A. It's common, yes.

14 Q. Using -- well, in reference to the map, you
15 heard the repeated testimony from Nodak today about the
16 dangers of our boring impacting their underground line.
17 Can you just respond to those concerns?

18 A. My priority, when designing any system or any
19 job I do, is always safety. That's always my first
20 priority.

21 There isn't any internal Otter Tail standard or
22 NESC guideline or regulation that prohibits a design
23 like this. They have guidelines that suggest you should
24 keep lines like this perpendicular to roadways, which
25 we're doing, as well as sufficiently -- sufficient

1 radial distance from other utilities or from other
2 underground lines. And all that criteria is being
3 followed.

4 Q. And just roughly, how far is your proposed line
5 extension from Nodak's underground single-phase line in
6 McFarland's Addition?

7 A. I don't have the exact, precise location of
8 their underground on our mapping system, but it is
9 located at the location, but my estimate would be about
10 50 feet.

11 Q. Okay. Now, when -- you indicated from the
12 junction box on the east side of I-29, am I correct,
13 your testimony was it's going to be underground service
14 all the way to the McFarland's Addition?

15 A. Correct.

16 Q. Now, does -- you've heard the testimony, there
17 is a Nodak overhead line in that area. Am I correct in
18 understanding that?

19 A. Yes. There's a single-phase underbuilt. Yep.

20 Q. And when you say "underbuilt," that's underbuilt
21 under Otter Tail's existing overhead line?

22 A. It's on our transmission poles, correct.

23 Q. Okay. Are there any NESC regulations that would
24 prohibit Otter Tail from running underground service
25 under Nodak's overhead lines in the location east of

1 I-29?

2 A. There isn't.

3 Q. And are you aware, does Nodak currently serve
4 any customers in McFarland's Addition?

5 A. Not that I'm aware of.

6 Q. You've heard the testimony here today, and just
7 want to be clear, that the underbuild that you
8 referenced, who owns those power poles?

9 A. Otter Tail does.

10 Q. And so Otter Tail's proposed extension from the
11 east of I-29 is to go under the existing overhead lines
12 of Nodak; correct?

13 A. Correct.

14 Q. Is that the only place where Otter Tail's line
15 -- or proposed extension to McFarland's Addition would
16 cross an existing Nodak line?

17 A. If you look at the north side of the exhibit,
18 you can see actually where our underground appears to
19 cross their underbuild. So there's an example right
20 there.

21 Q. And I guess my -- and it was probably a poor
22 question.

23 Our proposed extension only crosses their line
24 in one location; correct?

25 A. Correct.

1 Q. Okay. Now, you've sat and heard the testimony
2 of Nodak as to their proposed extension off the existing
3 three-phase service to the west of McFarland's Addition;
4 correct?

5 A. Yes.

6 Q. And along the western boundary of McFarland's
7 Addition, does Otter Tail have a facility or system in
8 that location?

9 A. Yes. We have our transmission line.

10 Q. And based on the testimony you've heard and the
11 exhibit you saw regarding Nodak's extension, would
12 Nodak's three-phase extension from those grain bins to
13 the west cross Otter Tail's existing transmission line?

14 A. I would say so, yes.

15 Q. And based upon the location of Nodak's existing
16 facilities and the fact it serves no customers in
17 McFarland's Addition currently, would Otter Tail's
18 extension of electric service to Love's constitute an
19 unreasonable duplication of electric services provided
20 by Nodak?

21 A. I don't believe so.

22 Q. And based upon Otter Tail's proposed extension
23 from the east side going underneath, in one location,
24 Nodak's overhead lines, are you aware of any
25 interference with Nodak's current systems as a result of

1 that extension?

2 A. It doesn't violate any NESC guidelines or Otter
3 Tail standards.

4 Q. And will your extension cause any interruption
5 to any services provided by Nodak to its customers?

6 A. Not -- nothing comes to mind.

7 Q. What is the current status of the Love's project
8 and electric service?

9 A. We have the material on hand ready to install,
10 but of course we haven't installed anything yet.

11 Q. What is the projected timeline for construction
12 of this Love's project?

13 A. I think four to six weeks would be a
14 conservative estimate.

15 Q. Mr. Jacobson, I have no further questions at
16 this time. Thank you.

17 ALJ DAWSON: Ms. Radermacher.

18 MS. RADERMACHER: Yes. May I have Exhibit Nodak
19 2 brought up, please?

20 CROSS EXAMINATION

21 BY MS. RADERMACHER:

22 Q. Mr. Jacobson, how are you today?

23 A. Good.

24 ALJ DAWSON: Mic on, please.

25 MS. RADERMACHER: Oh, excuse me. Sorry.

1 Q. Okay. I have in front of me your OTP No. 4.
2 And according to this, it says it was drawn by you; is
3 that correct?

4 A. Yes.

5 MS. RADERMACHER: Okay. Now, can I have Nodak 2
6 brought up, please?

7 Q. So when you're doing this -- kind of laying this
8 out, are these lines where they're supposed to be or is
9 this just a best guesstimate of where you think the
10 lines are?

11 A. I visited the location earlier this week and
12 looked at several landmarks on location. From what I
13 could see, is Nodak's line was previously located for
14 the construction of the Love's site, and you can see
15 individual flags going across the site --

16 Q. Okay.

17 A. -- showing where their single-phase line is, and
18 that's what I used to draw this red line in, using that
19 corresponding to poles and grain bins and other
20 landmarks.

21 Q. Okay. And so would you agree that Nodak would
22 be best -- know where their facilities would be versus
23 anybody else?

24 A. I would say so.

25 Q. Okay. And so if their engineering drafted where

1 their services are on this map, would you agree that's
2 probably pretty accurate?

3 A. There's always discrepancies between mapping and
4 real life locates.

5 Q. Okay. But would you agree that your map omits
6 part where that -- it actually jogs up and comes across
7 and comes back down, that you draw a straight line at
8 one point that goes completely across interstate and
9 over?

10 A. Yeah. I was not aware of that jog in the line.
11 I only looked at the poles that were placed at location.

12 Q. Okay. But again, would you agree that, based on
13 your site drawing, that it doesn't appear that you --
14 that you and Nodak disagree as to where Nodak's
15 facilities are located?

16 A. You could say that.

17 Q. Okay. And depending upon where Nodak's property
18 technically is, based on where you -- how you proposed
19 to build, it could affect how many times you cross over
20 that line. Would that be safe to say?

21 A. Say that again, please.

22 Q. So at this point, you were asked how many times
23 would you cross over the line. You indicate just once.
24 However, here it appears that this line, where the
25 facilities are actually located, it does not appear you

1 are not completely sure of?

2 A. We would never design an underground system to
3 cross another underground system. We would adjust it
4 accordingly based on where their line was located.

5 Q. Okay. And so as you say, this is a proposed
6 extension, this is not the actual -- I mean, you guys
7 have not extended service at this point?

8 A. No.

9 Q. So you could -- your route could be subject to
10 change based on site conditions. Would that be safe to
11 say?

12 A. It's safe to say for any project of this type.

13 Q. Okay. And have you -- and one thing, back to
14 the OTP No. 4. Was this intended to be kind of all
15 inclusive of what services are located out there?

16 A. I put this together in preparation for this --
17 for today with what I thought was relevant.

18 Q. Okay. So it might be that Nodak has other
19 electric lines that are -- that are surrounding this
20 area but you may not have included them?

21 A. On the west side of my exhibit, I have a box
22 showing where their three-phase transformer is.

23 Q. Okay.

24 A. I was unaware of where their underground
25 facilities were there, were over there, so that's why I

1 just have the box there. I didn't know where their
2 three-phase primary was located at.

3 Q. Okay. So you did not include that as part of
4 the exhibit?

5 A. I did not.

6 Q. Okay. Now, you indicated that -- you were
7 talking kind of boring versus trenching. Typically, if
8 you were to go across interstate, particularly on the
9 off ramps, the on ramps on the south- and northbound
10 lanes, boring would probably be the only way that you
11 could cross interstate. Would that be accurate?

12 A. I suppose overhead would be an option, but it
13 would be a very undesirable option.

14 Q. Okay. But you were talking about boring versus
15 trenching, saving a couple of dollars, and talking about
16 how boring -- basically touting boring as the only way
17 to go. But boring would probably be the only way if
18 you're going to do underground, would that be correct,
19 in this particular spot?

20 A. What I was saying is that by the time you set up
21 that equipment, usually the field personnel will just
22 keep that equipment set up and bore the rest of the job.

23 Q. Okay.

24 A. That's more efficient than re-setting up and
25 then plowing the cable in.

1 Q. Okay.

2 A. Often how it's done.

3 Q. So I apologize. I may have misunderstood that
4 you were talking about boring versus trenching, but once
5 you're boring, you're already going to continue to bore
6 is what you are referencing?

7 A. Uh-huh.

8 Q. Okay. Now, you have drafted a map based on what
9 your proposed extension was. Have you sat down and
10 crunched the numbers on what the costs of the proposed
11 extension would be?

12 A. Yeah. My cost estimate changed this week when
13 we had an updated transformer location from the Love's
14 site as well as an updated transformer size. So it
15 increased a little bit just this week. But the cost
16 estimate is about \$52,000.

17 Q. Okay. And when did you actually put that cost
18 estimate together?

19 A. I put this cost estimate together this week.
20 The initial cost estimate was put together by Doug
21 Steinmetz, the operations manager.

22 Q. And when would that have been?

23 A. Early twenty-nine -- 2020. I don't recall.

24 Q. Okay. Are you aware that Nodak Electric,
25 through interrogatories, had requested what the cost

1 estimate would be and none was provided because
2 engineering specs had yet to be completed? Are you
3 aware of that?

4 A. No one contacted me.

5 Q. Okay. So who filled out the interrogatories on
6 behalf of Otter Tail? Are you aware?

7 A. Filled out the --

8 Q. Interrogatories that were submitted by Nodak,
9 who filled those out?

10 A. I don't know what that is.

11 Q. Okay. So it would be a list of questions in
12 preparation of trial that was sent to Otter Tail,
13 essentially your counsel on your behalf, requesting a
14 cost -- what your cost estimate would be for extension
15 of service.

16 And you don't know who helped counsel prepare
17 those answers?

18 A. Are you talking about just -- I didn't fill out
19 any official forms.

20 Q. Okay.

21 A. But we went over the itemized -- the important
22 itemized list of the costs for the project together.

23 Q. Okay. And so -- but you're telling me that
24 initially your cost estimate was drafted sometime
25 in 2019?