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1 A. This project has been drug on a long time. It's
2 been a long time since the initial cost estimate was
3 drafted up. So I don't know what the date is, but it's
4 been well over a year.

5 Q. Okay. And so if somebody at Otter Tail said
6 that none existed, that would not be an accurate
7 statement; is that correct?

8 A. Depending on when they asked.

9 Q. Okay. And what if they were asked prior to the
10 hearing that was originally scheduled in 2000 and -- the
11 end of 2020?

12 A. I couldn't say.

13 MS. RADERMACHER: Okay. I have no further
14 questions.

15 ALJ DAWSON: Mr. Johnson.

16 MR. JOHNSON: No questions.

17 ALJ DAWSON: Commissioner Kroshus.

18 COMMISSIONER KROSHUS: Thank you, Your Honor.

19 You know, I'm going to just get to, I think,
20 what the heart of the matter is. I've got cost -- your
21 cost estimate, 52,000. We know what Nodak's cost
22 estimate to provide service is. But the bottom line is
23 you can provide -- what would you -- would you define it
24 as providing reliable service if you had the load?

25 THE WITNESS: Would I define this proposed

1 service to be reliable?

2 COMMISSIONER KROSHUS: Right.

3 THE WITNESS: Yes.

4 COMMISSIONER KROSHUS: Would you define, in your
5 expert opinion, if Nodak were to provide service from
6 their three-phase line, would that also be reliable?

7 THE WITNESS: I don't have enough knowledge of
8 their facilities and substations and transmission lines
9 to know.

10 COMMISSIONER KROSHUS: So you can't contest that
11 it would be reliable service as well? Okay. So we've
12 got that.

13 And where does the overhead transmission line
14 originate from that has been referenced many times as
15 the light blue dotted line, etcetera?

16 THE WITNESS: Yeah. You can see it. That's not
17 my exhibit actually. My exhibit is on the -- yeah, it's
18 a different one.

19 COMMISSIONER KROSHUS: Are you talking --

20 THE WITNESS: Exhibit 4.

21 COMMISSIONER KROSHUS: Exhibit 4. Okay, I've
22 got it in front of me.

23 THE WITNESS: So if you start on the west side
24 of the exhibit, the red line takes a 90-degree corner,
25 comes south. Further south out of the picture, it

1 crosses the interstate, it picks up our substation in
2 the city of Drayton, it goes north again, and then it
3 goes straight east out of town.

4 COMMISSIONER KROSHUS: Okay.

5 THE WITNESS: So basically does a U-shape, picks
6 up our substation in town, and goes east.

7 COMMISSIONER KROSHUS: So do you have overhead
8 lines all over the state that other facilities cross
9 under?

10 THE WITNESS: Yes.

11 COMMISSIONER KROSHUS: It's pretty common?

12 THE WITNESS: Very common.

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

15 ALJ DAWSON: Commissioner Fedorchak.

16 COMMISSIONER FEDORCHAK: I don't have any
17 questions, Judge. Thank you.

18 ALJ DAWSON: Commissioner Christmann.

19 COMMISSIONER CHRISTMANN: Nor do I. Thanks.

20 ALJ DAWSON: Any further questions?

21 MR. SANDERSON: Just briefly.

22 REDIRECT EXAMINATION

23 BY MR. SANDERSON:

24 Q. Mr. Jacobson, regarding this potential
25 interference, before you would do any excavating or

1 boring, Otter Tail would have locates performed by any
2 utilities in the area?

3 A. Of course.

4 Q. Okay. And the line locating that would be done,
5 it would be up to Otter Tail as a utility in the area to
6 go out and locate its facilities; correct?

7 A. Yes.

8 Q. And just so we're clear, you would not run, and
9 I believe your testimony -- you would not cross an
10 existing underground facility with your underground
11 facility. Was that your testimony?

12 A. That would be a very undesirable design choice.

13 Q. And certainly, as designed currently, your
14 proposed underground facility that you propose to serve
15 Love's is approximately 50 feet away from the existing
16 underground -- Nodak's existing underground in
17 McFarland's?

18 A. Give or take.

19 MR. SANDERSON: I have no further questions.
20 Thank you.

21 ALJ DAWSON: Any further questions?

22 MS. RADERMACHER: No, Your Honor.

23 ALJ DAWSON: Seeing no further questions, you
24 may step down.

25 Any further witnesses, Mr. Sanderson?

1 MR. SANDERSON: One more, Your Honor, and at
2 this time Otter Tail would call Chris Waltz. And he's
3 being called via teleconference.

4 ALJ DAWSON: Mr. Waltz, were you here for my
5 previous warnings as to perjury?

6 MR. WALTZ: Yes, I was.

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

9 MR. WALTZ: Yes, I do.

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

14 MR. WALTZ: Yes, I do.

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

16 MR. SANDERSON: Thank you.

17 **CHRIS WALTZ,**

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

20 DIRECT EXAMINATION

21 BY MR. SANDERSON:

22 Q. Good afternoon, Mr. Waltz. Can you please state
23 your full name and business address?

24 A. Yeah. Chris Waltz. Located, 215 South Cascade
25 Street, Fergus Falls, Minnesota.

1 Q. And, Mr. Waltz, whom are you employed by?

2 A. I'm employed by Otter Tail Power Company.

3 Q. And, Mr. Waltz, you had intended to be here but
4 you've been a little under the weather lately. Are you
5 feeling okay?

6 A. Yeah. I'm feeling better today. I apologize
7 for not being able to be there in person, but sure --
8 sure appreciate the gratitude to be able to testify
9 nonetheless and (indiscernible) so I appreciate that.

10 Q. And, Mr. Waltz, could you please explain what
11 your position with Otter Tail is?

12 A. Yeah. I manage our sales and program -- program
13 implementation team for Otter Tail.

14 Q. And just describe your job responsibilities with
15 Otter Tail.

16 A. Sure. So I -- I manage a team of energy
17 management representatives, commercial and industrial
18 representatives, industrial engineers, financial
19 analysts that's geographically located throughout our
20 70,000-square-mile service territory. And principally
21 what we're responsible for is the implementation of our
22 demand side management programs with our customers.

23 So it was referenced earlier about load
24 management, load control. We do all of that program
25 implementation as well as the management of our RP

1 account customers, commercial, industrial, etcetera.
2 And then we're responsible for, you know, customers'
3 expansions, new customers coming to Otter Tail, and just
4 working with them to ensure that -- that we're meeting
5 their expectations in service.

6 Q. As part of your service territory, does that
7 encompass the city of Drayton?

8 A. Yes.

9 Q. And Otter Tail provides electric service to
10 customers within the city of Drayton?

11 A. Yes, we do.

12 Q. And briefly describe your educational
13 background.

14 A. Sure. You know, I -- I -- I'm a certified
15 energy manager with the Association of Energy Engineers.
16 I have a bachelor of science degree from the University
17 of Minnesota, Crookston, and then a master of science
18 degree from the University of Minnesota, Twin Cities in
19 energy and environmental policy.

20 Q. And could you just briefly describe your
21 employment background after college?

22 A. Sure. Yeah, I've been in the electric utility
23 space for over ten years now. And I've been with Otter
24 Tail a little over six years.

25 Q. Now, as part of your job responsibilities with

1 Otter Tail, are you familiar with the proposed Love's
2 Truck Stop near Drayton?

3 A. Yes, I am.

4 Q. And could you explain to the Commission what has
5 been your involvement with that project?

6 A. Sure. Myself and my team became involved in the
7 project shortly after Love's reached out to us. So they
8 reached out to local staff, and then the local staff
9 contacted us, and that's how we developed a relationship
10 directly with Love's.

11 Q. And when did Otter Tail first become aware of
12 this proposed facility?

13 A. Yeah. You know, we became aware of the project,
14 I believe it was that January 2019 time frame.

15 Q. And your understanding, and we've heard the
16 testimony, but what is the location of the proposed
17 Love's facility?

18 A. Oh, sure. The property is located on the west
19 side of I-29 and just south of Highway 66 there in the
20 annexed property that's been described, just right in
21 that corner.

22 Q. And has that property of the proposed site been
23 annexed into the city of Drayton?

24 A. Yes, it has.

25 Q. Did Otter Tail have any involvement in the

1 property being annexed into the city?

2 A. No, we did not.

3 Q. And does Otter Tail have a franchise to provide
4 service to the city of Drayton?

5 A. Yes, we do.

6 Q. How long has Otter Tail held a franchise and
7 been providing electric service to customers within the
8 city of Drayton?

9 A. Yeah. The best that we can show we've been
10 providing, actually, the furthest dated-back franchise
11 agreement that we have with the community of Drayton was
12 from 1931. So I would anticipate maybe before that, but
13 as far back as that.

14 Q. And so at least your records show you've been
15 continuously providing -- or Otter Tail has been
16 continuously providing electric service to the city of
17 Drayton for the last 90 years?

18 A. That is correct.

19 Q. You heard some testimony here today. Does Otter
20 Tail's current franchise with the city of Drayton
21 require it to provide service to the Love's facility
22 pursuant to the terms of your franchise agreement?

23 A. Yes, it does.

24 Q. Now, you've heard a number of -- well, let me
25 ask you this, Mr. Waltz. Have you been present and

1 observing this hearing since the start this morning?

2 A. Yes. For the most part, yes.

3 Q. Okay. You've heard a number of -- or you've
4 heard testimony regarding a number of communications
5 between Otter Tail and Nodak. Have you been part to a
6 number of those conversations?

7 A. Yes. I was party to several of those
8 conversations that were previously testified to --

9 Q. And --

10 A. -- my -- oh, sorry.

11 Q. No. And I was simply going to ask, Mr. Waltz,
12 can you just explain to the Commission the timeline of
13 your communications with Nodak regarding service to this
14 Love's facility?

15 A. Sure. Yeah, the first meeting we had was a
16 meeting between Otter Tail Power and -- and Nodak
17 Electric Cooperative. So our area manager, who's based
18 out of Jamestown, North Dakota, and I met in Grand Forks
19 with -- with Mylo and Steve. And that's where we had
20 the initial conversations about service, discussions on
21 the -- the up and coming annexation that was yet to just
22 be passed by the city council. And then we subsequently
23 scheduled meetings after that as well.

24 Q. And how many times have you either met in person
25 or had telephone communications with representatives of

1 Nodak to discuss service issues for this facility?

2 A. Yeah. I -- I believe it was -- it was three
3 times that -- that we had -- we had conversations with
4 Nodak.

5 Q. And what do you recall from those -- you
6 mentioned what happened at the initial meeting in Grand
7 Forks. Can you kind of describe the other two times
8 that you've had communications with Nodak, both who was
9 present and what was said?

10 A. Sure. So in the other discussions that we had
11 with Nodak, both Love's Travel Stop and the City of
12 Drayton were represented at those meetings. And again,
13 as -- as testified to earlier, it was, you know, in an
14 attempt to -- to reach an amicable resolution here
15 without moving forward with contention.

16 Love's at the time and -- and subsequently the
17 City as a result, but Love's was very concerned that --
18 you know, about project delays and had referenced some
19 speed to market, you know, items that were important to
20 them. They subsequently had some delays in their
21 project. I believe Steve Walters testified to some of
22 the -- the onsite engineering and prep work that they
23 needed to do, which ultimately delayed the project. But
24 those were some chief concerns among the customer and
25 then, subsequently, the City.

1 And so we -- the goal of those meetings were to
2 discuss -- or basically request Nodak not to contend the
3 load.

4 Q. And during those meetings, did the City of
5 Drayton and Love's request Nodak not contest this
6 service?

7 A. Yes, they did. Both parties did, yes.

8 Q. Now, you heard some hypotheticals that were
9 asked of the representative of Nodak but -- and I'll ask
10 you a similar question. If the City of Drayton had come
11 to you, your customer, and requested that you not
12 provide service to McFarland's Addition and Love's Truck
13 Stop, would you be sitting here contesting this issue?

14 A. No. We actually had discussions with Love's
15 Travel Stop and the City regarding that very topic. We
16 were very open with the City of Drayton especially that
17 we recognized how important this potential development
18 was for them and we did not want to be a hindrance to
19 that economic development opportunity for the community.
20 We discussed with them possibilities if -- if Love's
21 ultimately selected Nodak for service, you know, that we
22 would ask the City to execute a limited franchise to
23 serve that load specifically if we had (indiscernible).

24 Q. Mr. Waltz, I have no further questions. Thank
25 you.

1 ALJ DAWSON: Ms. Radermacher.

2 MS. RADERMACHER: Yes.

3 CROSS EXAMINATION

4 BY MS. RADERMACHER:

5 Q. Hello, Mr. Waltz.

6 A. Hi.

7 Q. I just have a -- just briefly, did you ever
8 prepare a cost estimate of what your rates would be,
9 like what the annual revenue or -- annual revenue to
10 Otter Tail and ultimate cost to Love's Truck Stop would
11 be relative to this load?

12 A. Yes, we did. We provided that. And then we
13 also provided Love's with our commission-approved tariff
14 sheets, the rates that they would be eligible for under
15 our general rules and regs.

16 Q. Okay. And were you privy to the interrogatories
17 that Nodak Electric served on Otter Tail?

18 A. Yes, I was.

19 Q. And did you help prepare the responses to those?

20 A. Yes, I did.

21 Q. And did you provide the estimate that you had
22 created back on June 24th of 2019 --

23 A. Yes, I did.

24 Q. -- as an exhibit?

25 MS. RADERMACHER: I have what's been labeled as

1 Nodak 12. I'm not sure how to show the witness.

2 THE WITNESS: I do have that up in a PDF here, I
3 believe. If you want to verbally describe it, I think I
4 can pull up the correct document (indiscernible).

5 Q. Okay. I currently have the document that's
6 listed as Nodak 12, is "OTP - North Dakota Large General
7 Service Rate 603," and then it says for Love's Drayton,
8 and it's a two-page document. And it kind of goes
9 through monthly electric readings, base rate, riders,
10 electrical, rider calculations. And then you have total
11 annual estimated costs of approximately \$78,363.58?

12 A. Correct.

13 Q. Okay.

14 A. Yes, I'm looking at that.

15 Q. Okay. And so the document that I was just
16 reading from, would you agree that it's most likely a
17 true and correct copy of what you've submitted as part
18 of your interrogatory responses? Is this --

19 A. Yes.

20 Q. Is this the same document that you also provided
21 to Love's Travel Stop?

22 A. Yes, it is.

23 MS. RADERMACHER: I would move to enter Nodak
24 Exhibit 12.

25 MR. SANDERSON: I have no objection.

1 MS. RADERMACHER: And I apologize you don't have
2 it because it was a rebuttal.

3 ALJ DAWSON: Okay. So marked and admitted.
4 You just have the one copy?

5 MS. RADERMACHER: Actually, I have multiple
6 copies but it's not -- I would have to pull parts of it
7 -- because I'm only introducing part of it.

8 ALJ DAWSON: Okay.

9 MS. RADERMACHER: So I can do that fairly --

10 ALJ DAWSON: Are you going to ask more questions
11 about it?

12 MS. RADERMACHER: No. But if the Commission
13 would prefer to have a separate copy, like I said, I did
14 make additional copies.

15 ALJ DAWSON: Yeah, I think they should have a
16 copy of it.

17 MS. RADERMACHER: Thank you. I can certainly do
18 that. And I apologize because at the time I did not
19 realize there was an attachment that didn't relate to it
20 (indiscernible). Sorry about that.

21 Would you like one, Mr. Johnson, as well?

22 MR. JOHNSON: Sure.

23 MS. RADERMACHER: Okay.

24 (Pause)

25 UNIDENTIFIED SPEAKER: Kim, it's just those

1 first two pages; right?

2 MS. RADERMACHER: Yes, yes.

3 UNIDENTIFIED SPEAKER: All right. No problem.

4 MS. RADERMACHER: And that's what -- that was
5 the issue, because I didn't realize that you guys had --
6 I thought it all related to yours.

7 UNIDENTIFIED SPEAKER: No. You're good. I have
8 no (indiscernible).

9 MS. RADERMACHER: Okay.

10 BY MS. RADERMACHER:

11 Q. I guess the only other question I'd have is you
12 indicated that the city -- or that Otter Tail Power
13 would be willing to have conceded the load had Love's
14 chosen Nodak; is that correct?

15 A. That is correct.

16 Q. Okay. And prior to the annexation into the city
17 of Drayton, would you agree that that was, in fact,
18 Nodak's service territory?

19 A. Before annexation, yes.

20 Q. Okay. And do you realize that Nodak is still
21 disputing that it is its service territory? Is that
22 correct?

23 A. That's the dispute.

24 Q. Yes.

25 MS. RADERMACHER: I have no further questions.

1 ALJ DAWSON: Any further questions?

2 Mr. Johnson?

3 MR. JOHNSON: No, Your Honor.

4 ALJ DAWSON: Commissioner Kroshus?

5 COMMISSIONER KROSHUS: Just a point of
6 clarification. Exhibit 12, is that -- is this from the
7 company or from Otter Tail Power, or would this be
8 calculations provided by Nodak?

9 MS. RADERMACHER: This was -- may I answer that,
10 Your Honor?

11 ALJ DAWSON: You may answer it.

12 MS. RADERMACHER: Commissioner Kroshus, that
13 is -- actually was drafted by Mr. Waltz, as he indicated
14 that he did draft that back in 2019. That was given to
15 not only Love's but also provided to Nodak as part of
16 interrogatories or discovery that took place.

17 COMMISSIONER KROSHUS: Okay. Thank you for
18 clarifying. I didn't catch that. I don't have any
19 questions.

20 ALJ DAWSON: Commissioner Fedorchak.

21 COMMISSIONER FEDORCHAK: Thank you.

22 Thank you, Chris. Just two questions for you.
23 First of all, it's been curious to me, and you're the
24 last witness so you get this question, that there has
25 been some belief that customers get to pick whoever they

1 want to be their -- to provide their electric service.
2 Do you think that's a fair assumption to make based on
3 North Dakota law, that somebody moving into this
4 location would get to pick whoever they want to provide
5 electric service?

6 THE WITNESS: No, I don't think that that's a
7 correct characterization. You know, this load, and any
8 other load within the municipal boundary of Drayton, you
9 know, we are obligated, Otter Tail Power, to provide
10 that service. So in situations like that, I would say
11 no.

12 And I think the -- you know, there's North
13 Dakota law and statute that recognizes the situations
14 where, you know, service can be provided outside of that
15 municipal boundary, you know, that that's already been
16 discussed today too.

17 COMMISSIONER FEDORCHAK: Prior to -- so when
18 you're talking to customers, because you're in the
19 economic development side of things, do you characterize
20 it that way, that they can pick who they want or things
21 can be -- you can annex territory in order to bring them
22 within your service territory? I mean, this seems to go
23 kind of contrary to the agreements that are in place for
24 service territories.

25 THE WITNESS: Correct. We do not have

1 conversations about, you know, needing to annex. Just
2 as we did in this situation, we didn't have those
3 conversations with the customer or the community. Those
4 were had prior to OTP involvement, and subsequently
5 service was discussed after that.

6 COMMISSIONER FEDORCHAK: So --

7 THE WITNESS: We did outline, and what I
8 mentioned earlier was that if -- you know, we felt very
9 strongly at least that this was the direction of, you
10 know, the customer and ultimately the community, but we
11 were very open with the community of Drayton, because
12 they were very adamant that they wanted this for
13 development opportunity, and if -- if the customer
14 ultimately chose Nodak for service, if they -- if they
15 selected that, what we requested of the city is that
16 they would execute a limited franchise for Nodak to be
17 able to serve with -- within the municipal boundary and
18 within the franchise that currently exists.

19 COMMISSIONER FEDORCHAK: So in your early
20 conversations with Love's, it sounded like Steve Walters
21 was saying that there was understanding among the
22 company that they got to pick who provided their
23 service. Were you part of any of that discussion, or
24 those discussions at that point, or where did that come
25 from, that assumption?

1 THE WITNESS: Yeah, I was not a party to those,
2 nor my team. But really, the discussion about Otter
3 Tail service developed from the standpoint of that
4 property becoming annexed and as part of the -- the
5 franchise that we had with the city.

6 COMMISSIONER FEDORCHAK: Okay. And then in --
7 one other question. You talked about some of those
8 meetings in January, I think, and February, or whenever
9 they were, with -- I lost my timeline -- with Nodak and
10 you guys and Love's, I think, or the mayor, trying to
11 kind of reach an agreement. What was in it for Nodak to
12 basically concede this? Like what benefit would they
13 have gotten by conceding?

14 THE WITNESS: Sure. I think, you know, the
15 premise that -- that the mayor testified to and what he
16 really spoke to during those meetings was the growth and
17 development opportunity for that area. So, you know, I
18 -- I think -- or I guess I would understand that that
19 particular service, you know, wouldn't be provided by
20 Nodak. But generally speaking, in the economic
21 development space, when an area or region is growing
22 like that, it does benefit everybody, whether that's a
23 now housing development that outside -- you know, ends
24 up being outside of the city or -- or a couple of single
25 family homes or other businesses that -- that spur up as

1 a result so...

2 COMMISSIONER FEDORCHAK: Okay. Very good.
3 Thank you. That's all the questions for me.

4 ALJ DAWSON: Commissioner Christmann.

5 COMMISSIONER CHRISTMANN: You've twice now
6 mentioned that had the -- had the company chosen Nodak,
7 you would have recommended that the city file a separate
8 franchise for that subdivision. Did I understand that
9 correctly?

10 THE WITNESS: Correct.

11 COMMISSIONER CHRISTMANN: And so does that
12 indicate to me that you feel that the current franchise
13 is exclusive and only Otter Tail can serve within the
14 city limits?

15 THE WITNESS: I do not believe that it is an
16 exclusive franchise.

17 COMMISSIONER CHRISTMANN: Then why would you
18 have suggested that they get a separate franchise as
19 opposed to just serving it?

20 THE WITNESS: Sure. It was -- at the time it
21 was under direction from our general counsel that a
22 clean understanding of service to this load, the
23 understanding -- at least I believe the thought process
24 was, you know, that the property is annexed into the
25 city and, therefore, Otter Tail is obligated to serve

1 that entire area, not just that particular customer.
2 And so the -- the thought process was if this customer
3 chose or wanted Nodak service, that we would ask for a
4 limited franchise.

5 COMMISSIONER CHRISTMANN: But so your testimony
6 now is that you don't believe that the current franchise
7 is exclusive; correct?

8 THE WITNESS: I don't -- I don't specifically
9 think that it is an exclusive franchise.

10 COMMISSIONER CHRISTMANN: Are you familiar with
11 Otter Tail's January 7th filing? And I'm just picking
12 out one sentence, I know, on page 4 but it says:

13 "For all practical purposes, Otter Tail's
14 franchise is exclusive, subject to future
15 decisions by the City of Drayton."

16 So do you disagree with that filing?

17 THE WITNESS: No, I would not disagree with that
18 filing, I guess. No.

19 COMMISSIONER CHRISTMANN: So the filing is
20 right, that all for practical purposes it's exclusive,
21 but you don't think it's exclusive. I'm really mixed
22 up.

23 THE WITNESS: I -- I apologize, just based on
24 previous testimony and -- yeah, I guess my -- my
25 understanding is that, you know, we -- we hold the only

1 franchise in the community of Drayton.

2 COMMISSIONER CHRISTMANN: Okay.

3 THE WITNESS: And therefore we would serve.

4 COMMISSIONER CHRISTMANN: And would it surprise
5 you to know that in section 9 of that franchise, and
6 again I'm just reading part of a sentence, it says that
7 it is subject to the rules and regulations laid down by
8 the Public Service Commission?

9 THE WITNESS: I believe we have that in all of
10 our franchise agreements in North Dakota.

11 COMMISSIONER CHRISTMANN: Okay. So you had
12 mentioned a moment ago about, in the economic
13 development world, development benefits kind of
14 everybody in the neighborhood, maybe this would bring on
15 some other development that Nodak would benefit from.

16 Did I kind of understand that correctly?

17 THE WITNESS: Yep, that's correct.

18 COMMISSIONER CHRISTMANN: So as I'm hearing
19 Otter Tail's case today, is it your perception that any
20 land that a city annexes that doesn't have a meter on
21 it, an Otter Tail city I'm talking about, that that is
22 then an Otter Tail load?

23 THE WITNESS: I believe pursuant to our
24 franchise agreements and if we have the direction of the
25 city to serve the load, that we would be obligated to

1 serve that load.

2 COMMISSIONER CHRISTMANN: So what opportunity
3 does that leave for the cooperatives then, if every time
4 there's going to be a development, they annex it in and
5 then that makes it yours, that apparently none of these
6 lines or agreements mean anything?

7 THE WITNESS: Yeah, I think -- I think if we
8 look at other economic development opportunities, that
9 that generally isn't the case. There's usually, you
10 know, other ancillary -- other ancillary businesses or
11 other development opportunity that does occur on -- you
12 know, both where the cooperatives would serve or the --
13 the public or investor-owned utility.

14 COMMISSIONER CHRISTMANN: But so the business
15 that was at some point today described as the one that
16 appears to have a brown roof that is just off to the
17 east of I-29, in that northwest corner of Drayton, I
18 understand it that when -- when the 1968 agreement went
19 into effect, that was not there and was outside of the
20 city limits; is that correct?

21 THE WITNESS: I do not know. I'm sorry, I do
22 not know.

23 COMMISSIONER CHRISTMANN: Okay. Well, then just
24 one last thing. I'm again looking at that January 7th
25 filing. And on page 5 there's a sentence that says:

1 However, under the new law -- and the
2 previous sentence references the one passed
3 in 2005.

4 Under the new law, a service area agreement
5 is only valid and enforceable if the service
6 area agreement is filed with the Commission
7 and the Commission approves the agreement.

8 Is that how -- what you believe to be the case?

9 THE WITNESS: Yes. That is my understanding.

10 We do have other service area agreements with
11 neighboring cooperatives that have been filed and -- and
12 we operate under those agreements --

13 COMMISSIONER CHRISTMANN: Can you tell me about
14 -- I'm sorry, I talked over the last part of your
15 sentence.

16 THE WITNESS: That's okay. I was just going to
17 say per the orderly growth and development of those
18 communities.

19 COMMISSIONER CHRISTMANN: Okay. Can you tell me
20 about how many communities have refiled and been
21 approved since 2005 and how many are still subject to
22 the 1968 agreement, for whatever it's worth?

23 THE WITNESS: Yeah. It's a good question. And
24 I apologize, I don't -- I don't know numbers or
25 quantities.

1 I can tell you that we -- you know, we had
2 agreements before 2005 and subsequently after that, that
3 law was enacted. The areas that both Otter Tail and the
4 cooperatives could find agreement on were entered into,
5 submitted, and followed the execution of the particular
6 community, and then that was filed with -- with the
7 commissions. I believe there -- you know, that there
8 was hearings and such, and then the commissions would
9 ultimately approve or not approve those agreements. But
10 I, unfortunately, don't know the quantities.

11 COMMISSIONER CHRISTMANN: But it's Otter Tail's
12 testimony today then that for communities like Drayton,
13 that where the cooperative and Otter Tail have not
14 refiled since 2005, there is no longer a service
15 agreement, the 1968 agreement is null and void?

16 THE WITNESS: Correct. We -- we didn't know,
17 and it was probably a due diligence on our end, quite
18 frankly, but we did not know of a service agreement with
19 Nodak Electric prior to our initial meeting with -- with
20 them in Drayton. We didn't operate under an agreement.

21 COMMISSIONER CHRISTMANN: Okay. I have no other
22 questions.

23 ALJ DAWSON: Mr. Sanderson.

24 MR. SANDERSON: Thank you.

25 ///

1 REDIRECT EXAMINATION

2 BY MR. SANDERSON:

3 Q. Mr. Waltz, I do have a few follow-ups.

4 You were asked about that customer preference
5 and whether customers get to pick whoever they want for
6 service. And I believe your testimony is that's not how
7 Otter Tail operates, that customer preference is the
8 controlling factor for service. Is that your testimony?

9 Is that a yes?

10 A. Yes.

11 Q. Okay. Sorry, not to be rude, just so we have a
12 clear record.

13 But do you agree, Mr. Waltz, that while the
14 customer doesn't get to pick whoever they want to
15 provide service, the city does have a constitutional
16 right to pick whoever they want to serve?

17 A. Yes.

18 Q. Okay. And, Mr. Waltz, you were asked some
19 questions by Mr. Christmann, where does this leave the
20 cooperatives in these situations. There's nothing that
21 prevents a city from selecting a co-op to serve a load
22 within the city; correct?

23 A. Correct.

24 Q. And there's nothing that prevents the co-op from
25 obtaining a franchise to serve a customer within the

1 city; correct?

2 A. Correct.

3 Q. And you're aware of situations in North Dakota
4 where co-ops actually have franchises and serve
5 customers within a city?

6 A. Yes.

7 Q. And you're aware through your involvement in
8 this case, that -- that, in fact, Nodak attempted to get
9 a franchise from the City of Drayton?

10 A. Yes, they did.

11 Q. And that the City of Drayton elected not to
12 grant a franchise to serve?

13 MS. RADERMACHER: Objection, Your Honor.

14 A. That is correct.

15 MS. RADERMACHER: He misstates facts that are
16 not in evidence. Nobody -- even Mr. -- or the mayor
17 never testified that they had ever taken the matter of
18 the franchise up and, in fact, denied it. That is not
19 in record.

20 MR. SANDERSON: May I respond?

21 ALJ DAWSON: Yes, you may.

22 MR. SANDERSON: I think every witness has
23 testified to that the City of Drayton has not granted a
24 franchise to --

25 MS. RADERMACHER: I will agree that is better

1 termed or better phrased, because they have not granted,
2 but this matter has never been taken up and ruled on by
3 the City of Drayton. To my knowledge --

4 ALJ DAWSON: I agree with --

5 MS. RADERMACHER: -- there's no evidence in the
6 record.

7 ALJ DAWSON: I agree with her, and I agree with
8 the second statement of you as well. It's a fine line.

9 MR. SANDERSON: Okay. And we can play the
10 semantics game, Judge. I'll rephrase my question.

11 BY MR. SANDERSON:

12 Q. Mr. Waltz, you're certainly aware the City of
13 Drayton has never granted Nodak a franchise?

14 A. That is correct.

15 Q. Okay. Now, you were asked about this exclusive
16 franchise, and your testimony was that it's your belief
17 that Otter Tail's franchise is an exclusive -- well, is
18 not an exclusive franchise; correct?

19 A. Correct, just based on the testimony today.

20 Q. Yep. And certainly you -- you understand that
21 if the City of Drayton wanted to give Nodak or any other
22 electric provider a franchise, they certainly could do
23 so?

24 A. That's my understanding, yes.

25 Q. Okay. Now, you were asked specifically about a

1 provision on page 4 of Otter Tail Power's reply brief in
2 support of its motion to dismiss, and in it that -- the
3 provision that Commissioner Christmann read to you, that
4 although the City of Drayton retained the right to grant
5 additional franchises, it has declined to do so.
6 Specifically, the City of Drayton has declined to grant
7 a franchise to Nodak, for all practical purposes Otter
8 Tail's franchise is exclusive subject to future
9 decisions by the City of Drayton. That's the provision
10 that was read to you.

11 Is it your understanding that that is -- that
12 comes from the Divide County Crosby 1971 North Dakota
13 Supreme Court opinion in which the North Dakota Supreme
14 Court found that MDU's franchise, in essence, was
15 exclusive --

16 MS. RADERMACHER: I would object, Your Honor.
17 Again, calling for a legal conclusion, and I feel like
18 counsel's testifying.

19 MR. SANDERSON: I'm asking about the basis of
20 Mr. Waltz's understanding of his testimony.

21 ALJ DAWSON: The question is fair.

22 Q. Okay. And, Mr. Waltz, your understanding of
23 that opinion was the North Dakota Supreme Court's
24 finding that Montana Dakota Utilities' franchise was
25 exclusive since it possessed the -- in essence, was

1 exclusive since it possessed the only franchise to serve
2 the city of Crosby?

3 A. Yes, that's my understanding.

4 Q. And in the present case, Otter Tail possesses
5 the only franchise to serve the city of Drayton?

6 A. Yes, that's my understanding.

7 Q. Now, you were asked about the franchise subject
8 to the rules and regulations of -- of the Commission.
9 And you said that's something Otter Tail includes in its
10 franchises. Can you just elaborate on why that
11 provision is included?

12 A. Sure. We are regulated by the Public Service
13 Commission of North Dakota, and -- and as changes are
14 set forth by the Commission to Otter Tail Power, whether
15 it be rates, rate cases, provisions to our general rules
16 and regs, that -- that would have to be incorporated.

17 Q. Certainly. And one of the things, and this ties
18 into the last line of questioning I want to ask you
19 about, that Exhibit 12. The rates that you quoted to
20 Love's, where did you get those rates from?

21 A. Yeah. Those are our commission-approved public
22 tariff sheets. So we did a -- the rate analysis
23 specific to Love's. And then we also sent them the
24 actual tariff sheets. And that's, I believe, what Steve
25 Walters testified to where -- where his utility

1 department did their own calculations.

2 Q. And those rates and tariff sheets that you
3 provided have been previously approved by this
4 Commission in Otter Tail's last rate case?

5 A. That is correct.

6 Q. Now, and just so we're clear, when that
7 provision that you were asked about, section 9, subject
8 to rules and regulations. For example, if the City of
9 Drayton came to you and said, we want you to provide
10 service at, you know, significantly reduced rates than
11 what's been approved, that's not something Otter Tail
12 could do or would do; correct?

13 A. Correct.

14 Q. And that's -- that's the intent of that
15 provision, that your service is subject to the rules and
16 regulations of the North Dakota Public Service
17 Commission?

18 A. Correct.

19 Q. Okay. Now, you were asked about Exhibit 12, the
20 Otter Tail proposal. And that is something, when Love's
21 approached you and asked for a proposal of rates, that's
22 the document you provided of Nodak's rates and based on
23 the -- based upon the commission-approved rates and your
24 understanding of the service requirements. Is that my
25 understanding?

1 A. Yes.

2 Q. And I believe Exhibit 12 you testified to, that
3 Otter Tail's rates would be \$78,363. That's identified
4 in Exhibit 12?

5 A. Yes.

6 Q. Now, Nodak's counsel did not introduce the other
7 -- the other document you prepared, but you also, at the
8 time you submitted that proposal, you prepared a
9 proposal regarding Nodak's published rates for the exact
10 same service; is that correct?

11 A. Correct.

12 Q. And so you provided them an apples-to-apples
13 comparison of -- you know, based on the published rates
14 and the voltage usage expected for that facility?

15 A. Yes. We used their -- their known and public
16 rates that were on their website and provided the data
17 according to that. I believe there's testimony, again,
18 from Steve Walters where he and -- and Mylo had
19 additional conversations on rates or -- or maybe
20 discounted rates that the cooperative might be willing
21 to provide. So I was not privy to any of those.

22 Q. And do you have that proposal of Nodak's rates
23 that you prepared?

24 A. (Indiscernible) pull it up here --

25 MS. RADERMACHER: Your Honor, I would object to

1 the introduction of this exhibit just from the
2 standpoint that it's an estimate put together, but we
3 have -- Nodak has actually submitted our actual rates.
4 Had we not done that, I would see it appropriate, but at
5 this point, what they project our rates to be versus
6 what Nodak themselves provided to the entity, I don't
7 know what the relevance of it is.

8 ALJ DAWSON: Mr. Sanderson.

9 MR. SANDERSON: Certainly. And first, I'm not
10 offering this exhibit. But the door was opened to this
11 line of questioning by counsel, and she took two pages
12 of a four-page document that Mr. Waltz prepared, and I'm
13 asking him about the comparison.

14 And I believe it certainly is relevant to the
15 extent -- to the extent Nodak believes that cost of
16 service is relevant to this. So it's also responding
17 and rebutting the evidence that's been presented.

18 ALJ DAWSON: I'll allow it for now.

19 MR. SANDERSON: Okay. And it's simple.

20 BY MR. SANDERSON:

21 Q. And, Mr. Waltz, my question simply was, what was
22 your calculation of Nodak's rates in an apples-to-apples
23 comparison?

24 A. Sure. Our estimation was that the Nodak
25 Electric's annual rates or annual cost of service would

1 be about \$110,000.

2 Q. Okay. And so just by my quick math, your
3 calculation was Nodak's proposed published rates were,
4 roughly, \$32,000 higher than Otter Tail's?

5 A. Yes, that's correct.

6 Q. And finally, I want to ask you, Commissioner
7 Christmann asked you some questions about whether you
8 believe the service area agreement is a contract and is
9 enforceable. Otter Tail's not disputing that in 1968,
10 that it entered into a service area agreement with
11 Nodak; correct?

12 A. That is correct.

13 Q. Okay. The provision, what we do dispute, or
14 Otter Tail disputes in this case, is whether that
15 service area agreement is enforceable by this
16 Commission, whether that contract is?

17 A. That is correct.

18 Q. Okay. And you're aware at no point has Nodak or
19 Otter Tail filed that service area commission with -- or
20 that service area agreement with the Commission for
21 approval?

22 A. No.

23 Q. And your understanding of that 1968 service area
24 agreement, was that ever -- or did either Otter Tail or
25 Nodak ever receive approval or consent to that agreement

1 from the City of Drayton?

2 A. I'm sorry, can you repeat the question?

3 Q. Yep. Well, let me rephrase it.

4 Was the City of Drayton party to the 1968
5 service area agreement between Otter Tail and Nodak, to
6 the best of your understanding?

7 A. I'm sorry. No. No, they were not.

8 Q. Okay. And you heard the testimony that -- from
9 the president and CEO of Nodak who believes that the
10 service area agreement is binding upon the City of
11 Drayton. Do you recall that testimony?

12 A. Yes.

13 Q. Is it Otter Tail's position that the 1968
14 service area agreement supersedes the city of Drayton's
15 constitutional rights to select the electric service
16 provider within the city?

17 A. No.

18 Q. Mr. Waltz, no further questions. Thank you.

19 ALJ DAWSON: Ms. Radermacher.

20 MS. RADERMACHER: Yes.

21 RE CROSS EXAMINATION

22 BY MS. RADERMACHER:

23 Q. Mr. Waltz, were you around in 1968?

24 A. No, I was not.

25 Q. So you stated affirmatively and with such

1 conviction that the city of Drayton was, in fact, not
2 part of the negotiations of the 1968 agreement, but you
3 have no personal knowledge of that, do you?

4 A. No, I do not.

5 Q. On your -- now, as counsel called it, an
6 apples-to-apples comparison, would you agree you were
7 not privy to any conversations that could have possibly
8 occurred between Nodak Electric and Love's relative to
9 the rates that were provided to them or could be
10 provided to them should they extend service?

11 A. That is correct. I previously testified that I
12 was not part of those discussions.

13 Q. Okay. And Nodak Electric themselves would
14 probably be in a better position to determine what rate
15 they could provide the consumer versus Otter Tail
16 Electric. Would you agree?

17 A. Well, I think the customer, you know, just as
18 Steve Walters ultimately testified, that they have --

19 Q. But no. What I'm saying, that in calculating
20 the rates and determining what rate can be offered to
21 the individual, wouldn't that -- so if Nodak, they would
22 be in a better position to say what Nodak's rates are
23 going to be for the member versus Otter Tail telling the
24 member what Nodak Electric's rate is going to be. Would
25 you agree?

1 A. Correct.

2 Q. Okay. So it's not really an apples-to-apples
3 comparison, would you -- correct? Because you don't
4 know what was provided to Love's as part of any sort of
5 negotiation? Would that be a fair assessment?

6 A. This was an apples-to-apples comparison based on
7 the known and public rates on -- on Nodak's website.

8 Q. Okay. But again, there could have been
9 discounted rates or other rates that would have been
10 provided to the member that you were -- or the proposed
11 member that you were not privy to; correct?

12 A. That is correct.

13 Q. So if the Commission would give any weight to
14 any proposed rates that would have been provided, do you
15 think that yours carry more weight than what Nodak
16 Electric themselves had provided to Love's Truck Stop?

17 A. I think both rates were -- were preliminary rate
18 estimates and I think the -- the ultimate determination
19 by the customer and -- and their staff is the reason
20 they decided.

21 Q. Okay. And I'm not asking what the preference
22 decision was. I'm asking you, that your calculation
23 versus Nodak's calculation. Because there's quite a
24 considerable difference in some respects. So to me, I
25 don't think it's a fair assessment that it's an apples

1 to apples. Would you agree?

2 A. Well, I -- I can't make the determination off
3 the analysis that Nodak did either. There's no
4 estimates on how -- what the peak demands are, what the
5 load factor requirements are of the facilities. So
6 there -- there isn't a way for me to determine, you
7 know, that the numbers that were ultimately used to
8 derive the analysis that -- that Nodak did in their
9 exhibit.

10 Q. Okay. So you drafted yours in June 24th of
11 2019, which actually is my anniversary. And so based on
12 those, has there been a rate change that has occurred
13 since those were provided, I mean on behalf of Otter
14 Tail? Are you currently before the PSC on a rate change
15 request?

16 A. No.

17 Q. Okay. Now, you also kind of questioned the
18 existence of the agreements, this 1968 service
19 agreement. Are you saying that you were not aware of
20 the agreement or are you saying Otter Tail as an entire
21 entity was not aware of the existence of this agreement?

22 A. Yeah, to the best of my knowledge, we as a
23 company were not aware of the agreement prior to our --
24 our meeting.

25 Q. Okay. So you're stating that Otter Tail has

1 never had discussions relative to this agreement at any
2 point from 1968 until now?

3 A. Oh, no, I'm not saying that. No. My -- my
4 understanding is we were made aware that this agreement
5 existed between Nodak and Otter Tail when we met with
6 Mylo and Steve in Grand Forks.

7 Q. Okay. But are you trying to say that that was
8 the first you were kind of apprised of it?

9 A. That is correct.

10 Q. Okay. And so did Otter Tail not partake in some
11 of the disputes that were going on around -- outside of
12 Devils Lake?

13 A. Oh, Otter Tail was a party to those disputes,
14 but we didn't -- we were not aware of a specific
15 agreement like this with the community of Drayton.

16 Q. Oh. So you're saying that you didn't know that
17 this agreement actually pertained to Drayton? You're
18 saying --

19 A. Correct.

20 Q. -- that you're aware that the 1968 agreement
21 existed, you just didn't think it applied to Drayton?

22 A. Right. We never seen that -- the map that was
23 executed by both parties in, I believe, '61 and '60. So
24 yeah.

25 Q. Okay. I just wanted to clarify, because you

1 made it sound like you were not aware of this '68
2 agreement whatsoever, and so I just wanted to make that
3 clear. Because it's come up a number of times, I think,
4 between Otter Tail and Nodak, would you agree?

5 A. Yes.

6 Q. Now, you also stated in your testimony, you
7 talked about -- there was a question about the
8 jurisdictional issue left to the PSC and how that's
9 supposed to be interpreted. Is the franchise that
10 exists between Otter Tail and the City of Drayton,
11 that's actually an ordinance passed by the City of
12 Drayton; correct?

13 A. I do not -- I do not know.

14 Q. Okay. Your company entered it as an exhibit and
15 it's listed as an ordinance. So if I say that it's an
16 ordinance, would you tend to believe me?

17 A. Yes. If that's the case, yes.

18 Q. Okay. And so that language that is included in
19 there was actually part of an ordinance adopted by the
20 City of Drayton?

21 A. That would be correct then.

22 Q. Okay. And so what your interpretation may be of
23 what that provision is, is not necessarily controlling
24 because Otter Tail didn't adopt that, the City of
25 Drayton adopted that?

1 MR. SANDERSON: Object to the form and
2 misstatement of the evidence with respect to the parties
3 signing to the -- that -- that contract.

4 ALJ DAWSON: What's the exhibit number?

5 MR. SANDERSON: It is Otter Tail Exhibit 1. And
6 I'm specifically referring to page 3.

7 ALJ DAWSON: And so it's -- you're saying that
8 it's signed by -- say your question again.

9 MS. RADERMACHER: Okay. Just for clarification,
10 I understand that subsequent to the adoption of the
11 ordinance it was accepted by Otter Tail, but my
12 understanding is he was trying to interpret what the
13 contents were, and it was actually -- the City of
14 Drayton would, to me, be interpreting what the contents
15 of the ordinance would mean versus what Otter Tail.

16 MR. SANDERSON: And I'll just object to
17 foundation and misstatement of the evidence.

18 ALJ DAWSON: I'll allow the question, but keep
19 going.

20 MS. RADERMACHER: Okay. Thank you.

21 BY MS. RADERMACHER:

22 Q. But is it your understanding that this was an
23 ordinance that was adopted by the City of Drayton?

24 A. Yes.

25 Q. Lastly, you had mentioned that, you know, this

1 is a growth opportunity in the area and it benefits
2 everyone. But truly, in this situation, it benefits
3 Otter Tail over Nodak. Would you agree?

4 A. No. I would characterize this as a -- you know,
5 most economic development opportunities, when we work as
6 economic developers, it's -- it's best to try to
7 recruit, attract new businesses, customers to an area,
8 rather than a specific location. And it is, you know,
9 sometimes the shake of the dice that, you know, a
10 customer chooses the site in -- in Drayton for
11 particular reasons that are purview to their business,
12 or Grafton or Grand Forks.

13 As a result of really when you work on things
14 from an economic development perspective, you're much
15 better working together as a -- as a much larger group
16 and team promoting the state of North Dakota.

17 Q. Okay. But it's much easier for Otter Tail to
18 take that position, would you agree, when you're the one
19 walking away with the \$78,000 annually and Nodak is not?

20 A. No. We were very clear with -- with the
21 community of Drayton that -- that -- well, mainly
22 because they were very clear with us how important this
23 was to the community, and if, ultimately, the customer
24 would have selected Nodak service, we discussed with the
25 city about our desire to have them execute a limited