Electric Service Territory: Strategic Planning for Growing Municipal Utilities

JULIA POTTER

WPPI Annual Conference
September 19, 2024

BoardmanClark

THE RIGHT TO SERVE

WIS. STAT. § 196.495

Serve or Walk? The Simple Version

Is the Premises already served?

- If yes, walk away
- If no, then
  - Utility with distribution line **less** than 500 feet away from the facility/building to be served has exclusive right to serve
  - Customer may choose provider:
    - if both utilities have lines within 500 feet or
    - neither has a line within 500 feet

Is the Premises already served?

***1st Commandment*: Thou shall not serve another utility's customer**

No public utility or co-op may:

> "Extend or render electric service directly or indirectly to the **premises of any person already receiving electric service** directly or indirectly from another public utility or another cooperative association"

Wis. Stat. § 196.495(1m)(a)

Premises Factors

- Nature of changes in ownership and use of the “premises”
- Nature of changes in the service to be provided
- Utility of existing facilities
- Propinquity and economy of service
- Purposes of Wis. Stat. § 196.495
  - Protection of the consuming public
  - Avoidance of duplication of facilities

500-FOOT RULE

WIS. STAT. § 196.495(1m)(B)

500-Foot Rule in a Nutshell

- Exclusive Right to Serve
  - Only one utility has a distribution line within 500 feet of building/facility to be served
- Customer Choice
  - Both utilities have a distribution line within 500 feet
  - Neither utility has a distribution line within 500 feet

500-Foot Rule Measurement: Where Does the Line Begin and Where Does It End?

- Extensions are measured "as the air line distance between an existing local service distribution line that normally operates at less than 35 kV and the nearest point on the principal building or facility to be served." Wis. Stat. § 196.495(1)(b)
- Measurement shall be from "an existing local service distribution **line that is or has been used** in rendering local service to a customer." Wis. Admin. Code § PSC 112.08(1)

Start Point

"An existing local service distribution line that normally operates at less than 35 kV"

- Line does not have to be in service
- Measurement does not have to occur from the line that will actually be used to serve

End Point

"Nearest point on the principal building or facility to be served"

- A streetlight/security light cannot be the principal building or facility
- A temporary trailer cannot be the principal building or facility

EXCEPTIONS

Exceptions:

1. Consent of other utility
2. Utility owns the facility/building to be served
3. PSC determines that the closer utility's service is irreversibly inadequate or their rates are irreversibly unreasonable
4. "Clean" annexation

ANNEXATION EXCEPTION

WIS. STAT. § 196.495(2)

Pre-1961 Annexations: Complete Exception

- Utility holding the indeterminate permit has the exclusive right to serve
- Even if Co-op has facilities within the city/village limits, it cannot extend service to unserved premises
- No PSC decisions applying this part of the statute to a dispute between two public utilities

Post-1/1/1961 Annexations: Limited Exception for "Clean" Annexation

- "Clean" Annexation: If **no** "foreign" facilities in annexed area, then indeterminate permit-holder has the exclusive right to serve unserved premises within the annexed area
- If co-op or other public utility has facilities in annexed area at time of annexation, then you apply the 500-foot rule to determine who has the right to serve unserved premises within the annexed area

Post-1/1/1961 Annexation Cases

NSP v. Barron Electric Co-op (1996)

- Rival utility may extend service within an annexed area even though it had no facilities within the annexed area at the time it made the service extension, because it had a line in the annexed area **at the time of the annexation** (though that line was later removed)

Post-1/1/1961 Annexation Cases

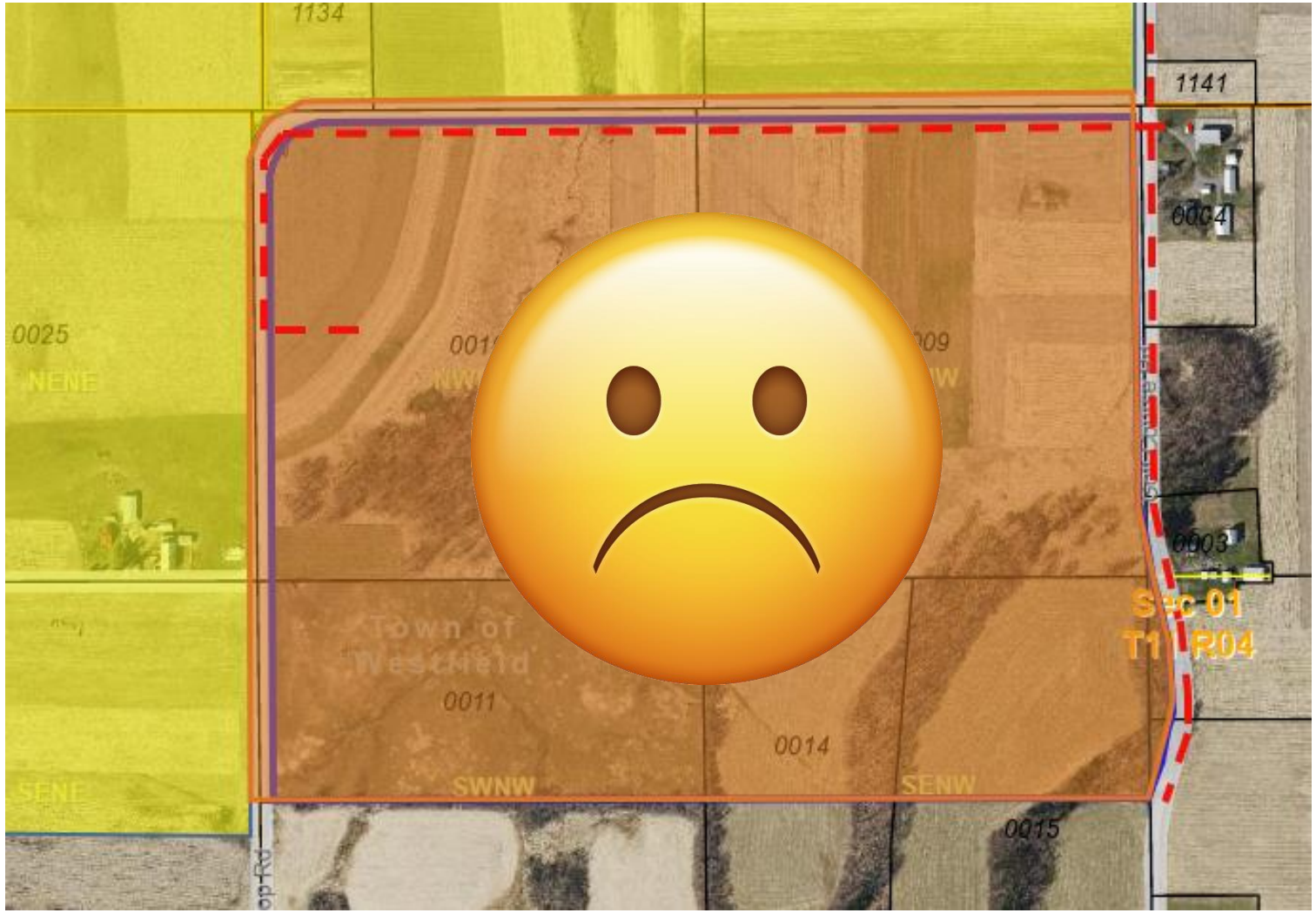
NSP v Clark Electric Co-op (2004)

- Two **unenergized and unused** utility poles and conductor constituted "electric distribution facilities" within the meaning of the term "electric distribution facilities at the time of annexation" as used in Wis. Stat. § 196.495(2)

STRATEGIC ANNEXATION

OPPORTUNITIES AND POTENTIAL PITFALLS

Land Proposed for Annexation



(Not So) Bright Idea

Types of Annexation

- Owner-Initiated
  - Direct Annexation by Unanimous Approval (Most Common)
  - Direct Annexation by One-Half Approval
  - Annexation by Citizen Referendum
- City/Village-Initiated (Rare)
  - Annexation by City or Village Referendum
  - Annexation of Town Islands
  - Annexation of City/Village-owned Territory
- Cooperative Boundary Agreements

Annexation Process: Direct Annexation by Unanimous Approval

- Annexation Petition
  - Signatures of 100% of property owners and electors within the territory to be annexed
  - Scale map and legal description of territory to be annexed
  - Filed with City/Village Clerk and Town Clerk
- DOA Public Interest Review (Counties with population > 50,000)
- Plan Commission Recommendation (sometimes)
- Annexation Ordinance

Annexation Configuration Requirements

- Contiguity
- County Parallelism
- No Town Islands
- Rule of Reason*
  - Exclusions and irregularities in boundaries can’t be the result of arbitrariness
  - Must be some reasonable present or demonstrable future need for the annexed territory
  - No other abuse of discretion

Potential Pitfalls, Part 1

- Property owner draws annexation boundaries
- Municipality shouldn’t be “real controlling influence”
- Lag between when boundaries are drawn and annexation ordinance is adopted

(Not So) Bright Idea

Potential Pitfalls, Part 2

- Unannexed portions of right-of-way
- “Wonky” non-buildable lots partially in City/Village and partially in Town
- Decrease in property value
- Assessment issues

ALTERNATIVES

Serial Annexation

Other Alternatives

- Removal of “foreign” facilities: Landowner works with co-op to have existing distribution facilities removed or relocated prior to annexation
- Territorial Agreement

Best Practices

- Educate yourself regarding your right to serve
- Make sure City/Village Administrators and planning staff understand the right to serve statute as it relates to annexationss
- Explain right-to-serve statute to developers seeking annexation but do NOT issue ultimatums or be the “real controlling influence” over where annexation boundaries are drawn
- Determine whether you already have a territorial agreement with your “rival” Co-op or IOU
- Where it makes sense to do so, enter into territorial agreements

Thank you!

JULIA POTTER – jpotter@boardmanclark.com - 608.283.1720

NOTHING IN THIS PRESENTATION SHOULD BE INTERPRETED AS LEGAL ADVICE. THE MATERIALS IN THIS PRESENTATION ARE FOR GENERAL INFORMATIONAL PURPOSES ONLY. CONSULT YOUR OWN ATTORNEY TO OBTAIN ADVICE WITH RESPECT TO YOUR PARTICULAR SITUATION.