

EL99-019

EL 99-019

KE/CF

EL 99-019

DOCKET NO.

In the Matter of — IN THE MATTER OF THE ONE-TIME  
SPECIAL UNDERGROUND  
ASSESSMENT BY NORTHERN STATES  
POWER COMPANY IN SIOUX FALLS,  
SOUTH DAKOTA

Public Utilities Commission of the State of South Dakota

DATE	MEMORANDA
11/16/99	Order Opening Docket;
11/18/99	Weekly Filings;
1/7/00	Order for and Notice of Hearing;
1/18/00	Amended Order for and Notice of Hearing;
1/26/00	NSP's Hearing Brief;
2/2/00	Transcript of hearing held on 1/27/00;
3/14/00	Principal Facts and Conclusions of Law; Notice of Entry of Order;
3/14/00	Docket Closed.

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE ONE-TIME SPECIAL ) ORDER OPENING DOCKET  
UNDERGROUND ASSESSMENT BY )  
NORTHERN STATES POWER COMPANY IN ) EL99-019  
SIOUX FALLS, SOUTH DAKOTA )

Sioux Falls ordinances require Northern States Power Company (NSP) to relocate overhead facilities in the downtown Sioux Falls area to underground whenever the adjacent streets are resurfaced. Certain streets in downtown Sioux Falls were resurfaced in 1999. The NSP Tariff provides that NSP will comply with lawful orders of a municipality and that NSP will charge the cost of the project to the benefitted customers. South Dakota Electric Rate Book, Section No. 6, Original Sheet No. 29, Section 5.5 (effective 12-16-96). NSP determined that the benefitted customers in this matter were NSP's Sioux Falls customers. NSP determined that the breakdown of the cost of this project to the individual customers will be approximately \$2.00/household and will be placed on the November 1999 bills.

The Commission has jurisdiction in this matter pursuant to SDCL Chapter 49-34A. On November 1, 1999, at a regularly scheduled meeting, the Commission voted to open a docket to determine the definition of "benefitted customer" in this matter. Commissioner Laska Schoenfelder dissented. It is therefore

ORDERED that a docket be opened to determine the definition of "benefitted customer" in this matter.

Dated at Pierre, South Dakota, this 16th day of November, 1999.

<b>CERTIFICATE OF SERVICE</b>
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.
By: <u><i>Melaine Kees</i></u>
Date: <u>11/16/99</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

*James A. Burg*  
JAMES A. BURG, Chairman

*Pam Nelson*  
PAM NELSON, Commissioner

LASKA SCHOENFELDER, Commissioner,  
dissenting

**South Dakota Public Utilities Commission**

**WEEKLY FILINGS**

**For the Period of November 11, 1999 through November 17, 1999**

If you need a complete copy of a filing faxed, overnight expressed, or mailed to you, please contact Delaine Kolbo within five business days of this filing.

Phone: 605-773-3705 Fax: 605-773-3809

**CONSUMER COMPLAINTS**

**CT99-056 In the Matter of the Complaint filed by Rose Bertsch, Aberdeen, South Dakota, against WITel, Inc. Regarding Unauthorized Switching of Services.**

The Complainant alleges that she received a call from someone indicating that they were an employee of her local company wishing to combine her billing. As a result, WITel is listed on her billing. The Complainant claims she did not authorize WITel to switch her service. The Complainant is seeking \$1000 in penalties.

Staff Analyst: Leni Healy  
Staff Attorney: Karen Cremer  
Date Filed: 11/12/99  
Intervention Deadline: NA

**CT99-057 In the Matter of the Complaint filed by Wayne W. Crockett, Hartford, South Dakota, against AT&T Communications of the Midwest, Inc. Regarding Unauthorized Switching of Services.**

On November 15, 1999, the Commission received a complaint from Wayne Crockett indicating that his long distance service was switched from MCI to AT&T without his authorization. He indicated that the billing had been corrected, but "that don't go with me."

Staff Analyst: Leni Healy  
Staff Attorney: Camron Hoseck  
Date Filed: 11/15/99  
Intervention Date: NA

**CT99-058 In the Matter of the Complaint filed by Edith Johnson, Bryant, South Dakota, against MCI WorldCom Regarding Unauthorized Switching of Services.**

On November 17, 1999, the Commission received a formal complaint from Edith Johnson indicating that her service was switched from AT&T to MCI without her permission. The Complainant is seeking to have the charges removed.

Staff Analyst: Leni Healy  
Staff Attorney: Karen Cremer  
Date Filed: 11/17/99  
Intervention Deadline: NA

## ELECTRIC

### **EL99-019 In the Matter of the One-Time Special Underground Assessment By Northern States Power Company in Sioux Falls, South Dakota.**

Sioux Falls ordinances require Northern States Power Company (NSP) to relocate overhead facilities in the downtown Sioux Falls area to underground whenever the adjacent streets are resurfaced. Certain streets in downtown Sioux Falls were resurfaced in 1999. The NSP Tariff provides that NSP will comply with lawful orders of a municipality and that NSP will charge the cost of the project to the benefitted customers. South Dakota Electric Rate Book, Section No. 6, Original Sheet No. 29, Section 5.5 (effective 12-16-96). NSP determined that the benefitted customers in this matter were NSP's Sioux Falls customers. NSP determined that the breakdown of the cost of this project to the individual customers will be approximately \$2.00/household and will be placed on the November 1999 bills.

Analyst: Heather Forney  
Attorney: Karen Cremer  
Date Filed: 11/16/99  
Intervention Deadline: 12/03/99

## NATURAL GAS

### **NG99-009 In the Matter of the Filing by Montana-Dakota Utilities Co. for Approval of a Waiver from Section 4(a) of the PGA Tariff Rates 88 and 89, which Specifies that the Surcharge Adjustment is Effective May 1 of Each Year.**

Montana-Dakota Utilities Co. (MDU) received a net refund of \$1,581,377 from Williston Basin pursuant to a FERC order in the month of October. As a means of returning the net refund to the appropriate customers, MDU is proposing to implement an out-of-cycle surcharge adjustment to be effective December 1, 1999 through April 30, 2000.

Staff Analyst: Heather Forney  
Staff Attorney: Camron Hoseck  
Date Filed: 11/12/99  
Intervention Deadline: N/A

## TELECOMMUNICATIONS

**TC99-105** In the Matter of the Application of PromiseVision Technology, Inc. for a Certificate of Authority to Provide Telecommunications Services in South Dakota.

PromiseVision Technology, Inc. intends to provide resold outbound presubscribed services and calling card services to both residential and business customers.

Staff Analyst: Keith Senger  
Staff Attorney: Karen Cremer  
Date Filed: 11/12/99  
Intervention Date: 12/03/99

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You may subscribe or unsubscribe to the PUC mailing lists at <http://www.state.sd.us/puc/>

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

<b>IN THE MATTER OF THE ONE-TIME SPECIAL</b>	)	<b>ORDER FOR AND NOTICE</b>
<b>UNDERGROUND ASSESSMENT BY</b>	)	<b>OF HEARING</b>
<b>NORTHERN STATES POWER COMPANY IN</b>	)	
<b>SIOUX FALLS, SOUTH DAKOTA</b>	)	<b>EL99-019</b>

Sioux Falls ordinances require Northern States Power Company (NSP) to relocate overhead facilities in the downtown Sioux Falls area to underground whenever the adjacent streets are resurfaced. Certain streets in downtown Sioux Falls were resurfaced in 1999. The NSP Tariff provides that NSP will comply with lawful orders of a municipality and that NSP will charge the cost of the project to the benefitted customers. South Dakota Electric Rate Book, Section No. 6, Original Sheet No. 29, Section 5.5 (effective 12-16-96). NSP determined that the benefitted customers in this matter were NSP's Sioux Falls customers. NSP determined that the breakdown of the cost of this project to the individual customers will be approximately \$2.00/household and will be placed on the November 1999 bills.

The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-34A, specifically 49-34A-2, 49-34A-3, 49-34A-4, 49-34A-6, 49-34A-8, 49-34A-11, 49-34A-26, and 49-34A-27. On November 1, 1999, at a regularly scheduled meeting, the Commission voted to open a docket to determine the definition of "benefitted customer" in this matter (Commissioner Laska Schoenfelder dissenting).

At its December 28, 1999, meeting, the Commission considered how to proceed with this matter. After listening to comments, the Commission voted to hold a hearing to determine whether NSP correctly determined who are the benefitted customers.

A hearing shall be held on January 28, 2000, beginning at 8:30 o'clock A.M., CST, in the Minnehaha County Commission Meeting Room, located on the second floor of the County Administration Building, 415 N. Dakota, Sioux Falls, South Dakota. All persons testifying will be subject to cross-examination by the parties.

The issue at the hearing is whether NSP correctly determined who are the benefitted customers.

The hearing shall be an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to be present and to be represented by an attorney. These rights and other due process rights shall be forfeited if not exercised at the hearing. If you or your representative fail to appear at the time and place set for the hearing, the Final Decision will be based solely on the testimony and evidence provided, if any, during the hearing or a Final Decision may be issued by default pursuant to SDCL 1-26-20. After the hearing, the Commission will consider all evidence and testimony that was presented at the hearing. The Commission will then enter Findings of Fact,

the Commission shall determine whether NSP correctly determined who are the benefitted customers. The Commission's Final Decision may be appealed by the parties to the state Circuit Court and the state Supreme Court as provided by law. It is therefore

ORDERED that a hearing shall be held at the time and place specified above on the issue of whether NSP correctly determined who are the benefitted customers.

Pursuant to the Americans with Disabilities Act, this hearing is being held in a physically accessible location. Please contact the Public Utilities Commission at 1-800-332-1782 at least 48 hours prior to the hearing if you have special needs so arrangements can be made to accommodate you.

Dated at Pierre, South Dakota, this 7<sup>th</sup> day of January, 2000.

<b>CERTIFICATE OF SERVICE</b>
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.
By: <u>Melanie Kalbo</u>
Date: <u>1/7/00</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg  
JAMES A. BURG, Chairman

Pam Nelson  
PAM NELSON, Commissioner

Laska Schoenfelder  
LASKA SCHOENFELDER, Commissioner

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

<b>IN THE MATTER OF THE ONE-TIME SPECIAL</b>	)	<b><u>AMENDED</u> ORDER FOR</b>
<b>UNDERGROUND ASSESSMENT BY</b>	)	<b>AND NOTICE OF HEARING</b>
<b>NORTHERN STATES POWER COMPANY IN</b>	)	
<b>SIoux FALLS, SOUTH DAKOTA</b>	)	<b>EL99-019</b>

Sioux Falls ordinances require Northern States Power Company (NSP) to relocate overhead facilities in the downtown Sioux Falls area to underground whenever the streets are resurfaced. Certain streets in downtown Sioux Falls were resurfaced in 1999. The NSP Tariff provides that NSP will comply with lawful orders of a municipality and that NSP will charge the cost of the project to the benefitted customers. South Dakota Electric Rate Book, Section No. 6, Original Sheet No. 29, Section 5.5 (effective 12-16-96). NSP determined that the benefitted customers in this matter were NSP's Sioux Falls customers. NSP determined that the breakdown of the cost of this project to the individual customers will be approximately \$2.00/household and will be placed on the November 1999 bills.

The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-34A, specifically 49-34A-2, 49-34A-3, 49-34A-4, 49-34A-6, 49-34A-8, 49-34A-11, 49-34A-26, and 49-34A-27. On November 1, 1999, at a regularly scheduled meeting, the Commission voted to open a docket to determine the definition of "benefitted customer" in this matter (Commissioner Laska Schoenfelder dissenting).

At its December 28, 1999, meeting, the Commission considered how to proceed with this matter. After listening to comments, the Commission voted to hold a hearing to determine whether NSP correctly determined who are the benefitted customers.

A hearing shall be held on January ~~2027~~, 2000, beginning at ~~8:30~~7:00 o'clock ~~A.M.~~P.M., CST, in the Minnehaha County Commission Meeting Room, located on the second floor of the County Administration Building, 415 N. Dakota, Sioux Falls, South Dakota. All persons testifying will be subject to cross-examination by the parties.

The issue at the hearing is whether NSP correctly determined who are the benefitted customers.

The hearing shall be an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to be present and to be represented by an attorney. These rights and other due process rights shall be forfeited if not exercised at the hearing. If you or your representative fail to appear at the time and place set for the hearing, the Final Decision will be based solely on the testimony and evidence provided, if any, during the hearing or a Final Decision may be issued by default pursuant to SDCL 1-26-20. After the hearing, the Commission will consider all evidence and testimony that was presented at the hearing. The Commission will then enter Findings of Fact, Conclusions of Law, and a Final Decision regarding this matter. As a result of the hearing,

the Commission shall determine whether NSP correctly determined who are the benefitted customers. The Commission's Final Decision may be appealed by the parties to the state Circuit Court and the state Supreme Court as provided by law. It is therefore

ORDERED that a hearing shall be held at the time and place specified above on the issue of whether NSP correctly determined who are the benefitted customers.

Pursuant to the Americans with Disabilities Act, this hearing is being held in a physically accessible location. Please contact the Public Utilities Commission at 1-800-332-1782 at least 48 hours prior to the hearing if you have special needs so arrangements can be made to accommodate you.

Dated at Pierre, South Dakota, this 18<sup>th</sup> day of January, 2000.

<b>CERTIFICATE OF SERVICE</b>	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By:	<u>Melanie Kaebo</u>
Date:	<u>1/18/00</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

James A. Burg  
JAMES A. BURG, Chairman

Pam Nelson  
PAM NELSON, Commissioner

Laska Schoenfelder  
LASKA SCHOENFELDER, Commissioner

GLENN W. MARTENS 1891-1963  
KARL GOLDSMITH 1885-1968  
THOMAS C. ADAM  
DAVID A. GERDES  
CHARLES M. THOMPSON  
ROBERT B. ANDERSON  
BRENT A. WILBUR  
TIMOTHY M. ENGEL  
MICHAEL F. SHAW  
WEIL FULTON

January 26, 2000

OF COUNSEL:  
WARREN W. HAY

TELEPHONE  
605 224-6803  
TELECOPIER  
605 224-6289  
E-MAIL  
dag@magt.com

HAND DELIVERED

Mr. William Bullard, Jr.  
Executive Director  
Public Utilities Commission  
State Capitol  
500 East Capitol Avenue  
Pierre, South Dakota 57501-5070

RECEIVED  
JAN 26 2000  
SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

RE: NSP REGULATORY; UNDERGROUND ASSESSMENT  
Docket No: EL99-019  
Our file: 0185

Dear Bill:

Enclosed are original and 10 copies of a hearing brief on behalf of NSP in this docket. Please file the enclosure.

With a copy of this letter, I am forwarding a copy to staff counsel, Karen Cremer.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

DAG:mw

Enclosures

cc/enc: Karen Cremer (hand delivered)

JAN 26 2000

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE ONE-TIME ) EL99-019  
SPECIAL UNDERGROUND ASSESSMENT )  
BY NORTHERN STATES POWER COMPANY ) NSP'S HEARING BRIEF  
IN SIOUX FALLS, SOUTH DAKOTA )

Pursuant to the Commission's amended order for and notice of hearing, this matter has been set for hearing in the Minnehaha County Commission Meeting Room, County Administration Building, 415 North Dakota, Sioux Falls, South Dakota, on January 27, 2000, beginning at 7:00 p.m. This brief is offered to the Commission as a statement of NSP's legal position in this matter.

Under Sioux Falls Ordinance Sections 41-130 to 41-132, it is the policy of the City that all overhead lines must be placed underground in urban renewal areas. Section 41-132 sets forth the general policy, in pertinent part as follows:

Inasmuch as the undergrounding of overhead lines in the urban renewal area will require a large capital outlay by the affected utility companies, it is reasonable that those utility companies receive at least a partial contribution for their expenses from the benefitted customers and inasmuch as the customers must convert or adapt their utility inlets to receive the new underground service, it is necessary to require them to provide at their own expense such new facilities before overhead service is removed. It is hereby declared that, except as is otherwise provided by this article, such undergrounding and conversions or adaptations required thereby will be implemented and governed by a general written policy prepared by the affected utility company, provided that such a written policy and any amendments thereto be first approved by the city.

NSP's written policy is its tariff, which was duly approved by this Commission. The tariff requires the company to comply with lawful orders of the municipality and to charge the cost of the project to

the benefitted customers. NSP determined that the benefitted customers were NSP's Sioux Falls customers.

It is clear that a properly filed and approved tariff constitutes the law of the jurisdiction regulating a public utility. American Phone, Inc. vs. Northwestern Bell Telephone Company, 437 NW2d 175 (SD 1989). The Commission's rules provide that upon proper notice to the Commission and the public, the tariff becomes effective on the date stated in the tariff unless the Commission suspends the operation of the tariff. ARSD 20:10:13:24. Here, no such order was entered, and the tariff stands approved by the Commission.

By statute, NSP is prohibited from favoring one customer over the other. SDCL § 49-34A-3 states that "[n]o public utility may, as to rates or service, make or grant an unreasonable preference or advantage to any person . . . ." NSP has an obligation to both its other ratepayers and to its stockholders not to subsidize one segment of its business to the expense of only part of its ratepayers. SDCL § 49-34A-6 requires that all rates be just and reasonable. All of this simply means that NSP is obligated to collect for the services which it provides from those customers that are benefitted by the services.

The Random House Dictionary defines benefit as "anything that is advantageous or for the good of a person or thing." The citizens of the city of Sioux Falls have, through their elected representatives, the City Commission, determined that charges such

as are involved in this matter are beneficial to the citizenry as a whole through the urban renewal ordinances mentioned above. Thus, it was entirely proper for NSP to charge back the cost of undergrounding to all Sioux Falls ratepayers.

Citizens Utility Board vs. Illinois Commerce Commission, 156 Ill. 2d 111, 651 NE2d 1089 (Illinois 1995), insofar as it is relevant to this case, involved a question of whether coal tar cleanup expenditures at former sites of manufactured gas plants, were costs generally recoverable in utility rates, despite contentions that the cost did not directly provide benefit to current utility customers. The Illinois Supreme Court upheld the Commission's determination that the coal tar remediation expenses were recoverable from ratepayers as benefitted customers. In seeking to overturn the Commerce Commission's determination, the Citizens Utility Board had contended that the cleanup costs were historical costs that were unrelated to the provision of current service. In upholding the Commerce Commission's determination, the Illinois Supreme Court stated

However even if utilities were required to prove that the coal tar remediation expenses directly benefitted customers, we disagree with CUB's narrow view of what types of costs and expenses benefit customers. As both the Commission and the utilities note, expenses commonly incurred to comply with the mandate of federal and state law have historically been recoverable from ratepayers.

In the same vein, in this case, the mandate came from the City of Sioux Falls, and the benefitted customers were NSP's Sioux Falls ratepayers.

In another case, State of Oklahoma vs. Oklahoma Gas and Electric Company, 536 P2d 887 (Ok. 1975), the Oklahoma Supreme Court concluded that ". . . promotional practices which are reasonably calculated to improve the utilities load factor and benefit all customers by reducing the average unit cost of energy are not unjustly discriminatory, and prohibitions against such practices constitute an invasion of the discretion reserved to corporate management." As in this case, it need only be shown that the benefit was a tangible benefit which would be traced to the ratepayers. The benefit need not be a direct monetary benefit.

#### CONCLUSION

From both the facts and the law, it is clear that the citizens of Sioux Falls as a whole benefitted from the undergrounding order issued by the City of Sioux Falls. That being the case, it was appropriate for NSP to determine that its Sioux Falls ratepayers were the benefitted customer and to charge back the cost of the undergrounding to all city ratepayers.

Respectfully submitted this 26<sup>th</sup> day of January, 2000.

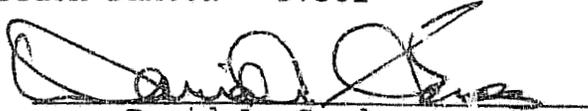
MAY, ADAM, GERDES & THOMPSON LLP

BY   
DAVID A. GERDES  
Attorneys for Northern States Power  
Company  
503 South Pierre Street  
P.O. Box 160  
Pierre, South Dakota 57501-0160  
Telephone: (605)224-8803  
Telefax: (605)224-6289

CERTIFICATE OF SERVICE

David A. Gerdes of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 26<sup>th</sup> day of January, 2000, he had hand delivered a true and correct copy of the foregoing in the above-captioned action to the following at her last known address, to-wit:

Karen Cremer  
Staff Attorney  
Public Utilities Commission  
500 East Capitol Avenue  
Pierre, South Dakota 57501

A handwritten signature in black ink, appearing to read "David A. Gerdes", is written over a horizontal line.

David A. Gerdes

January 27, 2000

To: South Dakota Public Commission

Re: Testimony on surcharge imposed on NSP customers

Background: The City of Sioux Falls, by ordinance required NSP to replace a fully operational overhead power line with underground facilities on 12th Street in downtown Sioux Falls at a cost of \$108,300. The City refused to pay so NSP added a surcharge to recoupe thier costs.

We belive this policy is wrong for the following reasons:

1. Since the City requested the project it should pay. The cost should be included as a part of city business ie budgeted and paid for via special assassments or other tax supported City accounts.
2. Allowing the surcharge would set a precedent which would give Government entities the power to create surcharges from the Telephone Company and the Gas Company as well as the Power Company. It would give the government entities free rein to require these types of projects without including the expenditures in the budjeting process and without being accountable to the taxpayers.

We respectfully request that you consider these comments before reaching your decision.

Sincerely,  
Everett and Helen Husen  
936 South Conklin  
Sioux Falls, SD

*Ernest Husen*

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE ONE-TIME EL99-019  
SPECIAL UNDERGROUND ASSESSMENT  
BY NORTHERN STATES POWER COMPANY  
IN SIOUX FALLS, SOUTH DAKOTA

County Administration Building  
Minnehaha County Commission Meeting Room  
Sioux Falls, South Dakota  
January 27, 2000  
7:00 o'clock p.m.

H E A R I N G

PUBLIC UTILITIES COMMISSION:

Mr. James Burg, Chairman  
Ms. Laska Schoenfelder, Commissioner  
Mr. Pam Nelson, Commissioner

APPEARANCES:

Ms. Rulayne Adits Wiest  
Mr. Greg Rislov  
Public Utilities Commission  
Attorney at Law  
500 East Capitol  
Pierre, South Dakota 57501

for the Public Utilities Commission;

Mr. Karen E. Cremer  
Public Utilities Commission  
Attorney at Law  
500 East Capitol  
Pierre, South Dakota 57501

for the Public Utilities Commission  
Staff;

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WITNESS

EXAMINATION

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APPEARANCES: (Continued)

Mr. David A. Gerdes  
May, Adam, Gerdes & Thompson  
P.O. Box 160  
Pierre, SD 57501-0160

for Northern States Power Company.

RECEIVED

FEB 02 2000

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

ORIGINAL

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Page 4

CHAIRMAN BURG: Good evening. Thank you, everyone, for coming. I know it's pretty chilly out there tonight. You could be listening to the president's speech, maybe that's why you're here. I don't know.

I'll begin the hearing in Docket EL99-019. In The Matter of the One-Time Special Underground Assessment by Northern States Power Company in Sioux Falls, South Dakota. Time is approximately 7:00 p.m. and the date is January 27, 2000. The location of the hearing is in the Minnehaha County Commission Meeting Room located on the second floor of the County Administration Building, 415 North Dakota Avenue, Sioux Falls, South Dakota.

I am Jim Burg, Commission Chairman. Commissioners Laska Schoenfelder and Pam Nelson are also present. I am presiding over this hearing. This hearing was noticed pursuant to the commission's amended order for and notice of hearing issued January 18, 2000.

The issue is -- the issue at this hearing is whether NSF correctly determined who are the benefited customers. All parties have the right to be present and to be represented by an attorney. All persons so testifying will be sworn in subject to

1 cross-examination by the parties.  
 2 The commission's final decision may be appealed  
 3 by the parties to the South Dakota Court -- to the  
 4 State Circuit Court and the State Supreme Court.  
 5 Rolayne Wiest will act as commission counsel. She  
 6 may provide recommended rulings on procedural and  
 7 evidentiary matters. The commission may overrule its  
 8 counsel's preliminary rulings throughout the  
 9 hearing. If not overruled the preliminary rulings  
 10 will become the final rulings. At this time I'm  
 11 going turn it over to Rolayne to conduct the  
 12 hearing.

13 MS. AILTS WIEST: First I'll take appearances of  
 14 the parties. NSP?

15 MR. GERDES: Your Honor, I'm David Gerdes of  
 16 Pierre, South Dakota, the law firm of May, Adam,  
 17 Gerdes & Thompson of Pierre for Northern States Power  
 18 Company.

19 MS. AILTS WIEST: Commission staff?

20 MS. CREMER: Karen Cremer with Commission Staff.

21 MS. AILTS WIEST: Does anyone have any opening  
 22 statements? Mr. Gerdes?

23 MR. GERDES: Your Honor, I simply want to  
 24 establish some preliminary things so we know what the  
 25 ground rules are.

1 MS. CREMER: Staff has no opening.  
 2 MS. AILTS WIEST: Mr. Gerdes, you may call your  
 3 first witness.  
 4 MR. GERDES: Call Jim Wilcox.  
 5 (NSP Exhibit Nos. 1, 2 and 3 were marked for  
 6 identification.)

7 JIM WILCOX,  
 8 called as a witness, being first duly sworn,  
 9 testified and said as follows:

10 DIRECT EXAMINATION BY MR. GERDES:

11 Q. Would you state your name, please?

12 CHAIRMAN BURG: Is that on, Jim?

13 A. Can you hear me there? I can just speak up maybe.

14 Let me get some water. My name is Jim Wilcox.

15 Q. Where do you reside?

16 A. Sioux Falls, South Dakota.

17 Q. What is your occupation?

18 A. I'm the manager of government and regulatory services  
 19 for Northern States Power Company in South Dakota.

20 Q. What is your understanding of why NSP is here today?

21 A. We're here to share our perspective on this matter.

22 Q. Did you, Mr. Wilcox, prepare certain exhibits for use  
 23 by the commission in this proceeding?

24 A. I did.

25 Q. I'll show you what's been marked as NSP Exhibit 1,

1 CHAIRMAN BURG: Can you in the back hear?

2 A WITNESS: Are the microphones on?

3 CHAIRMAN BURG: You think they are on? No, I  
 4 don't think they are. I don't know how to turn them  
 5 on. Does anybody know how to turn them on? Can you  
 6 hear us all right?

7 MR. GERDES: I can speak up.

8 CHAIRMAN BURG: Just ask the witnesses to each  
 9 speak up because we do have quite a few people.

10 MR. GERDES: I would like to determine for the  
 11 record some preliminary matters. First of all, as I  
 12 understand it the parties in this case are staff and  
 13 NSP. I'm not aware of any other interventions.  
 14 Would that be correct?

15 MS. AILTS WIEST: Right. There haven't been any  
 16 other interventions.

17 MR. GERDES: So anyone else that seeks to  
 18 examine witnesses would do so under the individual's  
 19 right to appear which appears in the commission's  
 20 rules as 20-10-01-15-06. Is that correct?

21 MS. AILTS WIEST: I believe so.

22 MR. GERDES: I have no opening statement. NSP  
 23 has filed its brief with the commission and that  
 24 would state our position at this point.

25 MS. AILTS WIEST: Ms. Cremer?

1 and I'll ask you what that is?

2 A. That is a map that I hope to use to explain our  
 3 perspective.

4 Q. And who -- was it prepared by you or under your  
 5 supervision and direction?

6 A. Yes, it was.

7 Q. And for the use and benefit of the commission and the  
 8 audience do you also have an overhead slide of that  
 9 map?

10 A. Yes, I do.

11 MR. GERDES: We'll offer Exhibit 1.

12 MS. AILTS WIEST: Any objection?

13 MS. CREMER: No objection.

14 MS. AILTS WIEST: Exhibit 1 is offered and  
 15 received.

16 MR. GERDES: May Mr. Wilcox put the overhead of  
 17 that map on the overhead?

18 MS. AILTS WIEST: Yes.

19 Q. Perhaps a collateral matter to be taken care of  
 20 first. Did this project in any way involve the  
 21 Washington Pavilion?

22 A. No, it does not.

23 Q. Would you explain that, please, using that map?

24 A. This map depicts NSP's distribution system in the  
 25 area south of downtown Sioux Falls. It's an

17

1 engineering drawing so please bear with me. It  
 2 begins at a Cliff Avenue substation which is located  
 3 on the west side of Cliff Avenue in Sioux Falls at  
 4 about 16th Street. And then it sort of works its way  
 5 through the area south of Sioux Falls and then toward  
 6 the downtown area. It is a three-phase overhead  
 7 13,800 volt distribution power system. And the  
 8 circles and other notes show where transformers exist  
 9 and customers are served from that distribution line  
 10 as it works its way through Sioux Falls.  
 11 My purpose with this map really is to show that  
 12 power line and then the approximate two-and-one-half  
 13 block section along 12th Street in downtown Sioux  
 14 Falls that was removed last summer and replaced with  
 15 an underground power system, a three-phase feeder of  
 16 13,800 volts, to allow that power line to continue to  
 17 serve customers in the downtown area. And it  
 18 actually connects -- there's an X that shows where it  
 19 connects to another NSP feeder called Weber Feeder  
 20 No. 1. Just for everyone's understanding, the  
 21 Washington Pavilion sits in this block which is an  
 22 empty box.  
 23 Q Identify it as where it is between streets.  
 24 A Between 11th and 12th Streets and Dakota and Main  
 25 Avenues in downtown Sioux Falls.

1 came about that it was requested that this stretch of  
 2 three-phase service be put underground.  
 3 A. Can I use this map?  
 4 Q. Just first tell us how it came about.  
 5 A. Well, the City of Sioux Falls has an Ordinance  
 6 41-130. It requires utilities serving the downtown  
 7 area in Sioux Falls to remove overhead facilities and  
 8 replace those with underground facilities whenever a  
 9 street is resurfaced along that street. And that  
 10 ordinance applies to an area called the urban renewal  
 11 area which lies in downtown Sioux Falls.  
 12 Q. But was NSP contacted by someone to initiate this  
 13 whole process?  
 14 A. Yes. Last -- approximately I think May the City of  
 15 Sioux Falls had called us to remind us of that  
 16 ordinance and that 12th Street was being resurfaced,  
 17 and we all knew we had an overhead distribution power  
 18 line along 12th Street and that we needed to comply  
 19 with that ordinance and move that line underground.  
 20 Q. And do I understand that the city contacted NSP with  
 21 -- and indicated the authority was the ordinance and  
 22 asked NSP to prepare to underground that section of  
 23 line. Is that correct?  
 24 A. Yes. That's correct.  
 25 Q. I'll show you what's been marked as NSP Exhibit 2.

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1 Q. Why don't you put an X in that block. Do you have a  
 2 pen?  
 3 A. I do.  
 4 Q. Sorry, I just thought of that.  
 5 A. (Witness complies with request.)  
 6 Q. So the record's clear, the X on the overhead depicts  
 7 the block in which the Washington Pavilion is  
 8 located. Is that correct?  
 9 A. It does.  
 10 Q. All right.  
 11 A. There has been quite a bit of confusion lately about  
 12 this project and its relevance to the Washington  
 13 Pavilion. And what should be known is that the City  
 14 of Sioux Falls operates a municipal electric system,  
 15 and that municipal electric system actually serves  
 16 the Washington Pavilion.  
 17 Q. So NSP doesn't even serve the Washington Pavilion?  
 18 A. NSP does not serve the Washington Pavilion.  
 19 Consequently, this line, although coming within  
 20 one-half of a block of the Washington Pavilion, it  
 21 does not serve the Washington Pavilion.  
 22 Q. Okay. Does that conclude your testimony from that  
 23 map?  
 24 A. I think it does.  
 25 Q. All right. Tell the commission, please, how it first

1 and I'll ask you what that is?  
 2 A. Well, it is a fairly hand-drawn map that I prepared  
 3 that depicts the downtown Sioux Falls area. It  
 4 attempts to outline in a color this urban renewal  
 5 area that's defined by city ordinance. And it does  
 6 -- it shows a couple of other things. In blue I  
 7 attempted to show the city blocks that the city  
 8 municipal utility actually serves within that urban  
 9 renewal area that NSP does not serve. And then in an  
 10 orange color I've attempted to show the approximate  
 11 two-and-a-half blocks along 12th Street where the new  
 12 underground line exists.  
 13 Q. Okay. And was this map prepared by you or under your  
 14 direction?  
 15 A. It was.  
 16 Q. And would it assist your testimony in this matter?  
 17 A. I hope so.  
 18 Q. And do you have an overhead of that map as well?  
 19 A. I do.  
 20 MR. GERDES: Offer Exhibit 2.  
 21 MS. ALTS WEST: Any objection?  
 22 MS. CREWES: No objection.  
 23 MS. ALTS WEST: Admitted.  
 24 MR. GERDES: Can Mr. Wilcox put the map on the  
 25 overhead?

18

1 MS. AULTS WHEAT: Yes.

2 Q. Why don't you tell us, orient us with that map,

3 please, and tell us what it shows.

4 A. It is a map of downtown Sioux Falls. North is toward

5 the top of the map as you might imagine. The

6 coloring is different than on the paper copies I've

7 given you. I apologize. I didn't have a yellow

8 marker for this overhead. But in red here and yellow

9 on the maps outlines the urban renewal area of the

10 City of Sioux Falls, a downtown area defined by city

11 ordinance. Bounded on the north by Fourth Street; on

12 the south by 12th Street; on the west by Minnesota

13 Avenue; and on the east by certain railway track.

14 The blue as I indicated are the city blocks that

15 the City of Sioux Falls municipal power system

16 actually serves. And then on this map circled is the

17 approximate two-and-one-half block area where the new

18 power line, new underground power line now exists.

19 For reference this X in blue, the box here is the

20 Washington Pavilion.

21 Q. Again, that's between what streets and what avenues?

22 A. Between 11th Street and 12th Street and between

23 Dakota and Main Avenues.

24 Q. Who contacted NSP and requested this underground

25 line?

1 overhead?

2 A. It varies for a project of this nature. If you're

3 comparing new facilities to new facilities I would

4 say approximately two-and-one-half times the cost.

5 Underground is approximately two-and-one-half times

6 the cost of a similar overhead system.

7 Q. What's NSP's policy -- well, let me ask you this

8 question: Was the overhead service in that area

9 serviceable before it was moved?

10 A. It was an operational three-phase power line.

11 Q. So there was no other reason to move it other than,

12 what?

13 A. For reasons to comply with the city ordinance.

14 Q. You could have used it had it not been put

15 underground then?

16 A. It was being used.

17 Q. So what is your standard construction practice when

18 you're asked to underground something? Do you pay

19 for -- does NSP pay for it or how does that work?

20 A. No, not normally. If a customer asked us to provide

21 for some non-standard service, underground service

22 that wasn't necessary other than for customer needs

23 or request, we would expect that customer to provide

24 for that.

25 Q. Now, is there a reason from NSP's perspective why it

1 A. I had a conversation with Lyle Johnson of the City of

2 Sioux Falls, Director of --

3 Q. Of Public Works?

4 A. Public Works, sorry.

5 Q. And what was the substance of your conversation as

6 you recall it?

7 A. As I recall Lyle reminded me of the city ordinance

8 and that there was a street project coming up, and

9 that, you know, he made me aware of the ordinance and

10 made us aware that we needed to move forward in some

11 manner.

12 Q. And did he tell you that the City of Sioux Falls

13 expected NSP to comply with the ordinance and put the

14 service underground in that location?

15 A. Yes.

16 Q. What considerations -- well, let me ask -- well,

17 strike that. What is NSP's usual policy with respect

18 to undergrounding a transmission line such as that?

19 A. Well, we're guided by our tariffs, and under normal

20 circumstances I suppose our standard practice is to

21 construct our power lines overhead because of the

22 expense. Underground is more expensive. So our

23 standard construction practice is to build our power

24 lines overhead.

25 Q. How much more expensive is undergrounding than

1 would seek to have either the customer or someone

2 else pay for this undergrounding when it's not

3 necessary otherwise?

4 A. Well, certainly we're guided by tariffs and

5 statutes. There's a statute, I think it's South

6 Dakota Codified Law 49-34A-3 that prohibits an

7 unreasonable preference on our part from one customer

8 to another. So in complying with that statute, and

9 in the interest of fairness to all of our customers

10 we -- we are guided by that statute as well as the

11 tariffs that are on file with the commission. They

12 provide for these standard construction practices.

13 And anything that's non-standard we believe should be

14 paid for by the folks who are requesting that.

15 Q. After you had received the notification from the city

16 to underground this service, did you explore other

17 ways of paying for the service other than getting it

18 from ratepayers, for instance?

19 A. I had a conversation with Lyle again at the City of

20 Sioux Falls, and we discussed the possible ways to

21 recover our costs. And we did explore -- I explored

22 with the city the possibility of the city

23 contributing for that. But my recollection is that

24 the city really did not have a mechanism to make that

25 payment. We had to find some other way.

19

1 Q. I may have asked you this question, but, really, in  
2 this circumstance that we were faced with here, what  
3 was the only benefit of undergrounding that line?

4 A. I think from our view, the ordinance exists for  
5 aesthetic purposes, some beautification of the  
6 downtown.

7 Q. Would it be fair to say there was no operational  
8 reason to put it underground?

9 A. Not from NSP's perspective, no.

10 Q. So did you then go through an analysis of who the  
11 benefited customers were?

12 A. I went through a mental exercise. You know, it's a  
13 short list of folks who I think might be available to  
14 pay for a project like this. The NSP shareholders.  
15 I didn't think that was a fair -- fair to charge  
16 them. They didn't ask for the project. They didn't  
17 want it.

18 We looked at the folks who live in the urban  
19 renewal area. There are about three hundred of those  
20 folks, thirty of which are residential customers.  
21 The cost of the project was about \$108,000. So if  
22 you divide that out by three hundred it would be  
23 several hundred dollars for each of those customers.  
24 It just didn't seem fair to them.

25 We thought about the folks who live along 12th

1 activities?

2 A. This tariff is on file with the Public Utilities  
3 Commission and it has been approved by the  
4 commission, and it serves as a policy device, I  
5 think, that guides us in our operation and helps us  
6 to answer questions like this one.

7 Q. And if NSP wanted to change the policy that's set  
8 forth in this tariff, what would NSP have to do?

9 A. We would need to file with the South Dakota Public  
10 Utilities Commission for approval of that change.

11 Q. So you just can't go out and change your policy, you  
12 have to have the permission of the commission to do  
13 so. Is that correct?

14 A. That's correct.

15 Q. So ultimately then the \$108,000 cost of this project  
16 was dealt back to all of NSP's customers in Sioux  
17 Falls. Is that correct?

18 A. That's correct.

19 Q. And if I understood your testimony correctly your  
20 reasoning was that this was something that was  
21 ordered by the city commission, and the city  
22 commissioners were elected by the citizens of Sioux  
23 Falls and so thus you thought the fairest, the  
24 fairest thing to do would be to charge it to all  
25 Sioux Falls customers. Is that essentially what your

1 Street. There's only, I think, seven customers on  
2 the north side of 12th Street. So you divide that by  
3 seven, that doesn't seem reasonable. And the logical  
4 conclusion, I think, was that we believed that all of  
5 the residents of Sioux Falls are beneficiaries of  
6 this, and that we chose to select all of NSP's  
7 customers of Sioux Falls as the benefited customers.

8 Q. Show you what's been marked as Exhibit 3, and I'll  
9 ask you what that is?

10 A. Exhibit 3 is a two-page exhibit. The first page  
11 shows the three city ordinances, I think, that are  
12 relevant here. 41-130, 41-131, and 41-132 that deal  
13 with -- first is the definition of the urban renewal  
14 area and then the ordinance that requires us to move  
15 the overhead facilities. And then the second page is  
16 a page from NSP's tariff book that's on file and  
17 approved by the South Dakota Public Utilities  
18 Commission. It's entitled Section 5.5, "Replacement  
19 of Overhead with Underground."

20 MR. GERDES: And we'll offer Exhibit 3.

21 MS. AILTS WIEST: Any objection?

22 MS. CREMER: No objection.

23 MS. AILTS WIEST: It's admitted.

24 Q. And what is the significance of the tariff, from  
25 NSP's standpoint, in terms of how it governs NSP's

1 testimony is?

2 A. That's correct. We believe that the city ordinance  
3 is passed by a city council who represent all of the  
4 citizens of Sioux Falls, and were elected by those  
5 folks. And in our mind that group would be the  
6 benefited customers, and NSP's best proxy for that  
7 group of benefited customers is all of NSP's  
8 customers in Sioux Falls.

9 Q. Would this three-phase service that you've described  
10 and that you showed us on Exhibit 1, would that be a  
11 main feeder line or transmission line?

12 A. It's a main distribution feeder line.

13 Q. Now, you talked about -- in going through your  
14 analysis of the various people that were available to  
15 pay -- you talked about the customers in the urban  
16 renewal area. It's true, is it not, that when the  
17 line was underground those people along that line  
18 also had to pay for new hook-ups for that underground  
19 line. Isn't that correct?

20 A. That's correct. I believe seven customers along 12th  
21 Street had an overhead service, and in order to be  
22 able to connect to the new underground system they  
23 had to hire an electrician at their expense, and  
24 reconnect their system to match that new underground  
25 system.

1 Q. And why did they have to do it at their expense?  
 2 A. NSP's tariff again provides for, Section 5.5,  
 3 "Replacement of Overhead with Underground," that  
 4 tariff guides us and says that, "The customer, at his  
 5 expense, must engage an electrician to convert or  
 6 adapt his electrical facilities to accept service  
 7 from the underground facility to be installed."  
 8 Q. Mr. Wilcox, from your perspective, what was your  
 9 overall goal in determining benefited customers with  
 10 reference to this project?  
 11 A. Well, I said before that there probably is no good  
 12 way to do this, but we had to find a best way. And  
 13 we believed that asking all of our customers in Sioux  
 14 Falls to contribute to this project was the best way.  
 15 Q. How much did that work out to be per customer?  
 16 A. Two dollars and four cents plus six percent sales tax  
 17 which comes out to \$2.16 per customer.  
 18 MR. GERDES: That's all the questions I have.  
 19 MS. AILTS WIEST: Staff?  
 20 MS. CREMER: Thank you.  
 21 CROSS-EXAMINATION BY MS. CREMER:  
 22 Q. Good evening, Mr. Wilcox. Do you have Exhibit 3 in  
 23 front of you?  
 24 A. I do.  
 25 Q. Okay. Would you look at Section 41-132 which reads

1 "General Policy"?  
 2 A. Yes.  
 3 Q. Okay. In that paragraph, after the first comment,  
 4 reads, "It is reasonable that those utility companies  
 5 receive at least a partial contribution for their  
 6 expenses from the benefited customers." My question  
 7 is: Is that what NSP is seeking here is a partial  
 8 contribution?  
 9 A. No. We believe our tariff as described in 5.5  
 10 provides the mechanism for cost recovery. And it  
 11 even goes so far as specifying the formula to use and  
 12 in our view would provide for complete cost recovery.  
 13 Q. What was the cost of the whole project? Wasn't there  
 14 like -- wasn't it like \$125,000, but the cost that  
 15 you're assessing to the benefited customer is less  
 16 than that?  
 17 A. That's true. That's correct. The complete cost of  
 18 the project by our records was \$125,347.68.  
 19 Q. Okay. And you're charging an amount less than that.  
 20 Is that correct?  
 21 A. That is correct.  
 22 Q. And why is that?  
 23 A. When we did this work we took advantage of the fact  
 24 that we had a hole in the ground and we had -- we  
 25 were putting in duct line. And Sioux Falls, the city

1 is growing, and we know that there's going to be  
 2 future expansion in that neighborhood and so we took  
 3 advantage of that fact and we added some additional  
 4 ductwork and an additional manhole to provide for  
 5 future growth. And so we subtracted the expenses of  
 6 those items that were incremental to the needs of the  
 7 project.  
 8 Q. And then I believe you testified earlier that seven  
 9 customers had to convert from, as I understand, what  
 10 was perfectly good above-ground utility service to  
 11 underground. And that cost them -- do you have any  
 12 idea what that cost them or is each customer's amount  
 13 a different amount?  
 14 A. I have not been in conversation with any of them. I  
 15 do not know the exact amount for each of them.  
 16 Q. Okay. Again, looking at Exhibit 3, Section 41-132,  
 17 it requires in there -- it would be towards the end  
 18 of the paragraph. It is hereby required or required  
 19 thereby that it be implemented and governed by a  
 20 general written policy prepared by the affected  
 21 utility company. Do you have a general written  
 22 policy?  
 23 A. Yes. We believe that that is our tariff.  
 24 Q. And did you provide that to the city for approval?  
 25 A. The ordinance was passed in 1973 before any of us

1 were here. And I'm not certain of whether our tariff  
 2 book has been submitted and approved by the city,  
 3 however, I believe that the fact that the city  
 4 requested us to move forward with this work is  
 5 evidence that they have approved and believe that  
 6 this is something that we need to move forward with.  
 7 Q. Okay. The ordinance does require the written policy,  
 8 along with the resolution attached indicating city  
 9 approval, is effective when accepted by the city  
 10 finance director for filing. And you don't have a  
 11 date for that as far as you know?  
 12 A. I do not.  
 13 Q. Would someone from the city have that date, do you  
 14 know?  
 15 A. I don't know.  
 16 MS. CREMER: Okay. That's all I would have.  
 17 COMMISSIONER NELSON: I have a couple.  
 18 EXAMINATION BY COMMISSIONER NELSON  
 19 Q. Is it your belief that the citizenry of Sioux Falls  
 20 are benefiting from this project?  
 21 A. Based on the logic that we were required to do this  
 22 undergrounding project by a city ordinance, and that  
 23 city ordinance is passed by a city council, and those  
 24 council members represent all of the citizens of  
 25 Sioux Falls, it's our perspective that we would

21

1 define the benefited customers as all of those folks  
 2 in the City of Sioux Falls.  
 3 Q. So is it not true that -- NSP does not serve all the  
 4 citizenry of Sioux Falls. So when you determined  
 5 that the benefited customers were all of the  
 6 citizens, that's somewhat inconsistent with the idea  
 7 that all the people benefited but only NSP customers  
 8 in Sioux Falls are going to pay?  
 9 A. That's correct. NSP does not serve all the customers  
 10 in Sioux Falls, but we do serve most of the customers  
 11 in Sioux Falls. But we don't have access to certain  
 12 customers of the city, the municipal or the co-op  
 13 customers. We only have access to our own  
 14 customers. And we believe that represents a proxy  
 15 for the citizens of Sioux Falls.  
 16 Q. My other question, I guess, one of my other questions  
 17 would be you said, and maybe that's not exactly what  
 18 you meant, or maybe I'm interpreting what you say. I  
 19 gathered that when you looked at how you were going  
 20 to recover your costs, and you had your conversation  
 21 with the City of Sioux Falls, you said you looked at  
 22 who could pay. Well, looking at who could pay seems  
 23 to be different from me than looking at who is  
 24 benefiting. There's a difference between figuring  
 25 out how you're going to pay for something and

1 we explored the possibility of the City of Sioux  
 2 Falls contributing to this project. And we  
 3 determined that the city did not have a mechanism  
 4 do that, and we would have to go elsewhere.  
 5 Q. And based on what did you determine that? It seem  
 6 to me that they have a tax base. They can issue  
 7 bonds. I think you have several mechanisms to pay  
 8 So on what basis did you decide that they didn't ha  
 9 a mechanism to pay?  
 10 A. Through a conversation with Lyle Johnson of the Ci  
 11 of Sioux Falls.  
 12 Q. In other words, you're accepting what they said abou  
 13 a mechanism although you really agree here today th  
 14 they did have some mechanisms and they could have  
 15 paid?  
 16 A. I was informed by the City of Sioux Falls that they  
 17 were not going to be able to pay for this project and  
 18 that I had to find another way to pay for this  
 19 project.  
 20 Q. I guess I think I made my point here. You said, too,  
 21 that it cost approximately two-and-a-half times more  
 22 to do the underground cable than it does to do the  
 23 above-ground cable. And the only reason that you  
 24 feel that that decision was made to replace  
 25 functional equipment was because of the aesthetics

1 deciding who benefits. And it seems that when you --  
 2 based on your own testimony here today -- you  
 3 approached it from the standpoint of who could pay --  
 4 A. Well --  
 5 Q. -- not necessarily who benefited.  
 6 A. I think technically we looked at who we would define  
 7 as the benefited customers. We arrived at, what we  
 8 believed, that all of our customers in Sioux Falls  
 9 are the benefited customers.  
 10 Q. So does that mean you're changing your testimony,  
 11 because I heard you say that you looked at -- first  
 12 you explored with the city the possibility that they  
 13 might pay. So it seems to me that maybe it crossed  
 14 your mind that maybe it was the citizens of the City  
 15 of Sioux Falls who benefited, and when they told you  
 16 that they didn't have any mechanism to pay you  
 17 accepted that.  
 18 A. Well, I was using, I suppose, the loose words, folks  
 19 to pay, as being synonymous with the benefited  
 20 customers.  
 21 Q. Is it true that at one point you thought maybe it was  
 22 the City of Sioux Falls who benefited and they told  
 23 you that they had no mechanism to pay, because I  
 24 think that's what you said here today.  
 25 A. I had a conversation with the City of Sioux Falls and

1 which was something that the city deemed that  
 2 they thought was worth paying for. But isn't  
 3 it also more expensive to maintain the underground  
 4 wires or not because I was led to believe that it  
 5 was?  
 6 A. I don't have specific data here with me tonight. I  
 7 would have to look into the maintenance costs. I  
 8 guess I can't say that I know that.  
 9 Q. Because I thought I asked you once and you told me  
 10 that it was more expensive to maintain underground  
 11 wire than it was above-ground wire.  
 12 A. I'm not sure I can say that. I don't have the  
 13 information with me tonight to say that.  
 14 Q. Could you get me that information?  
 15 A. I will.  
 16 Q. And then another question. You also -- Ms. Cremer  
 17 asked about how much it cost these people that had to  
 18 make special conversions to be able to hook up to  
 19 this new system. Could you find out how much that  
 20 cost people?  
 21 A. I could certainly ask. I think it's a private matter  
 22 between them and their electrician. If they're  
 23 willing to share it with me, I suppose, but we could  
 24 ask.  
 25 COMMISSIONER NELSON: Okay. I'm done.

22

1 EXAMINATION BY COMMISSIONER SCHOENFELDER:  
 2 Q. Mr. Wilcox, just looking at your tariff, the tariff  
 3 that's filed with the Public Utilities Commission  
 4 versus, and I believe it was 1973, if I'm reading  
 5 this Sioux Falls Code correctly.  
 6 A. Yes.  
 7 Q. That was the Sioux Falls Code in 1973. The  
 8 definition of urban renewal is quite different in  
 9 what you file as a tariff and as what Sioux Falls has  
 10 declared their urban renewal area. And I think their  
 11 urban renewal area, if I'm reading it correctly, and  
 12 I might not be reading it correctly, but it's  
 13 bordered by Fourth Street and Minnesota Avenue and  
 14 12th Street on the south and Milwaukee. It gives a  
 15 definite area surrounded by it. And to me the  
 16 definition that's filed with the PUC, in order for  
 17 that to be a renewal -- an urban renewal area, if I'm  
 18 reading the tariff correctly, you would have to raze  
 19 75 percent of the buildings. In other words,  
 20 75 percent of the existing buildings would have to be  
 21 destroyed. So they don't really match as far as the  
 22 definition of urban renewal. Isn't that correct?  
 23 A. I'm not sure that I agree with that, Commissioner.  
 24 Q. I would like to have your interpretation if that's  
 25 possible.

1 Section A, where it talks about -- the second  
 2 sentence -- the benefited customers will be charged  
 3 the value of.  
 4 COMMISSIONER SCHOENFELDER: That's all I have.  
 5 EXAMINATION BY CHAIRMAN BURG:  
 6 Q. First of all I'm really quite disappointed that the  
 7 City of Sioux Falls did not choose to intervene  
 8 because they're the ones that initiated this in the  
 9 first place, and yet we have no way of asking them or  
 10 questioning them or anything else. So I'm really  
 11 disappointed that they've ignored this completely  
 12 because we did notice them of this hearing. And I do  
 13 have several questions. Have you undergrounded any  
 14 other lines in the urban renewal area?  
 15 A. Yes, we have, Commissioner.  
 16 Q. And how were those handled?  
 17 A. It's my understanding that in each of those cases  
 18 there were new buildings being constructed that  
 19 provided new revenue that justified the cost of that  
 20 underground. I don't know -- I don't believe that  
 21 any of those projects were -- were of the magnitude  
 22 that this one is. This was a three-phase overhead  
 23 feeder.  
 24 In the other cases they were typically an  
 25 overhead lateral where there was just a few wires

1 A. My understanding of the tariff, Section 5.5,  
 2 "Replacement of Overhead with Underground," and  
 3 Section B, "Urban Renewal," I don't -- I don't know  
 4 that I would agree that an urban renewal area means  
 5 that 75 percent or more of the buildings in each  
 6 block are being demolished.  
 7 Q. That's in your tariff though.  
 8 A. The way I read this is that in an urban renewal area  
 9 wherein 75 percent or more of the buildings in each  
 10 block are being demolished. Separate concepts.  
 11 Urban renewal area, then it goes on to state,  
 12 "Wherein, in each block, 75 percent or more of the  
 13 buildings are being demolished." And then it goes  
 14 on.  
 15 Q. And it says, "The undergrounding is required either  
 16 by the urban renewal plan or by ordinance."  
 17 A. Right.  
 18 Q. And so, you know, I guess I could accept the fact  
 19 that the Sioux Falls ordinance then would become --  
 20 would be what you would have to operate by. But the  
 21 Sioux Falls ordinance then does not define what a  
 22 benefited customer is. It's just in your mind or in  
 23 our mind basically. Right?  
 24 A. In my mind it's as defined in Section 5.5,  
 25 "Replacement of Overhead with Underground,"

1 running down an alley for maybe a half a block. An  
 2 example would be over here on -- it's 11th and  
 3 Phillips, there was the Hansen building. There was a  
 4 fire a number of years ago and the Hansen building  
 5 burned down. And we had an overhead line in the  
 6 alley to the east of that Hansen building. And then  
 7 a new bank building has since been constructed and  
 8 the city ordinance required us to -- and that alley  
 9 was resurfaced and so the ordinance required us to  
 10 move those overhead facilities to underground, but  
 11 the fact that the new bank building was there  
 12 provided enough new incremental revenue to warrant  
 13 our expense. So we didn't have to -- I guess that  
 14 was the benefiting customer so we took care of it  
 15 locally without having to go somewhere else.  
 16 Q. If I understand what you've said, that was a smaller  
 17 wire than what this is, a lesser wire?  
 18 A. That's true.  
 19 Q. It did not require nearly as much cost or work. And  
 20 the fact was that you had a new customer that you  
 21 probably would recover the cost of that from over the  
 22 period of time; that's the difference between the  
 23 method of recovering for that one and the method of  
 24 recovering for this one.  
 25 A. That's correct.

23

1 Q. Would that be accurate?  
 2 A. That is correct.  
 3 Q. All right. If you don't recover the cost of this  
 4 project what happens to those expenses for NSP? I  
 5 guess I should say if you don't recover the cost in  
 6 the manner you've indicated.  
 7 A. Well, I suppose ultimately our shareholders  
 8 contribute as well as all of NSP's customers  
 9 throughout South Dakota would contribute.  
 10 Q. And it's definitely true that the customers outside  
 11 of Sioux Falls would not benefit, so it should not be  
 12 spread over all customers as would happen if you  
 13 applied the general rates to it.  
 14 A. I believe that to be true, yes.  
 15 Q. You indicated that the benefited customers, you  
 16 listed NSP shareholders, occupants of the urban  
 17 renewal area, 12th Street customers, all Sioux Falls  
 18 NSP customers, and yet you didn't add one. Would the  
 19 City of Sioux Falls as a whole be a beneficiary?  
 20 A. Well, actually on my list -- I'm sorry, I didn't get  
 21 that out. But I had five on my list and the City of  
 22 Sioux Falls was one on that list.  
 23 Q. Another one, another item that I didn't write down,  
 24 it's a little curious to me, 12 Street seems to be  
 25 just on the edge. The north side of 12th Street is

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1 in the urban renewal area. The south side of 12th  
 2 Street is not. Is that correct?  
 3 A. That's correct.  
 4 Q. Were there any of those seven customers on the south  
 5 side of 12th Street?  
 6 A. No.  
 7 Q. Were there no customers on the south side served by  
 8 that line?  
 9 A. There are customers on the south side of 12th Street  
 10 that are served by this line, yes.  
 11 Q. But they did not have to underground or what happened  
 12 then?  
 13 A. Now -- I'm sorry. I don't know that I can answer  
 14 that right now, Commissioner.  
 15 Q. Because I'm real curious as to what happened to those  
 16 customers because they didn't come under the  
 17 ordinance.  
 18 A. Well, the line was on the north side of 12th Street  
 19 and I believe that there's actually a lateral that  
 20 extends before, before 12th Street that actually  
 21 serves the south side of the street. I need to check  
 22 into that.  
 23 Q. Maybe you better explain what a lateral is.  
 24 A. A lateral is a wire that would extend from the main  
 25 feeder line to serve customers.

1 Q. But to your knowledge nobody on the south side of  
 2 12th Street had additional costs because of this.  
 3 wire?  
 4 A. I'm not certain about that, Commissioner. I need to  
 5 find out.  
 6 Q. And I think it's important because I don't see how  
 7 the ordinance would make them go to that extra  
 8 expense because the ordinance does say any customer  
 9 in the urban renewal area has to bear that expense if  
 10 I understand right.  
 11 A. I don't believe there was, but I need to check.  
 12 Q. How many customers does NSP have in Sioux Falls?  
 13 A. About 53,000 customers.  
 14 Q. And how many customers, electric customers in Sioux  
 15 Falls are not served by NSP, do you know?  
 16 A. I do not know that number off the top of my head. I  
 17 can find out.  
 18 Q. Okay. I would like to know because that's the thing  
 19 that basically drove this was the fact that if you  
 20 happen to be an NSP customer you were going to get  
 21 charged the \$2.16, but if you lived in Sioux Falls  
 22 and got the same benefits as all those customers you  
 23 were not charged the \$2.16. And I fully realize that  
 24 you don't have any authority to charge from anybody  
 25 except NSP customers. And that's why I am one who

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1 believes the city should have bore the cost because  
 2 they made the requirement. And from our standpoint  
 3 we can't -- we can't require all customers to pay or  
 4 we don't -- the fairness thing would not require all  
 5 of them. And -- okay. I covered all my questions.  
 6 COMMISSIONER SCHOENFELDER: I have a couple of  
 7 additional ones.  
 8 EXAMINATION BY COMMISSIONER SCHOENFELDER:  
 9 Q. Let's go back to the customers that were the people  
 10 that you talked about, approximately three hundred  
 11 people in that area. You talked -- somewhere I read  
 12 thirty people and then you talked about seven. So  
 13 who really -- who really were the customers that are  
 14 in that area that would benefit from this change, at  
 15 least the aesthetic part of it would be more visible  
 16 to them?  
 17 A. Well, let me go over those numbers again,  
 18 Commissioner.  
 19 Q. I need to get an idea.  
 20 A. Exhibit 2.  
 21 CHAIRMAN BURG: If it would help put that  
 22 exhibit back up if it would help the public.  
 23 A. This is Exhibit 2. And there are approximately three  
 24 hundred NSP customers in the urban renewal area.  
 25 Q. In the whole area?

24

1 A. In the whole area.  
 2 Q. Okay.  
 3 A. And about thirty of those are residential customers.  
 4 Q. Okay. Thirty are residential.  
 5 A. And along on the north side of 12th Street from  
 6 Second Avenue over to Main there were about seven  
 7 customers. They had to reconfigure their electric  
 8 service.  
 9 Q. They were seven residential customers or commercial?  
 10 A. I think those were all commercial.  
 11 Q. Okay.  
 12 A. Seven commercial customers.  
 13 Q. Let me ask you something -- as long as you've got  
 14 that up there. I don't know if this is the map you  
 15 need, but if you -- walk through the electric system  
 16 with me just a minute. If you put a feeder system  
 17 in. If you put a feeder line in. Does that benefit  
 18 only those thirty customers plus those seven  
 19 customers? Who gets the benefit from the feeder line  
 20 if the feeder -- if the feeder line is buried? Who  
 21 uses the feeder line, I guess, is the right way to  
 22 ask you that?  
 23 A. Reasonably all of the customers along, along the  
 24 feeder line utilize it.  
 25 Q. All the way from that substation clear over to --

1 residential development our standard practice has  
 2 become to bury those lines.  
 3 Q. And how much is the increased cost of that and who  
 4 bears that?  
 5 A. NSP and all of our customers I suppose bear that  
 6 expense. When you have a new development, however,  
 7 where you're able to plow in wires, that  
 8 significantly reduces the cost differential. I  
 9 believe it's still greater than overhead would be,  
 10 but it's much closer, than it would be if you were  
 11 replacing an existing overhead line in an existing  
 12 neighborhood.  
 13 COMMISSIONER SCHOENFELDER: Thank you. That's  
 14 all I have.  
 15 CHAIRMAN BURG: Let me follow up a second on  
 16 that.  
 17 EXAMINATION BY CHAIRMAN BURG:  
 18 Q. Would that be because if you replace existing ones,  
 19 not only do you have to put in the new line but you  
 20 have to remove the old one and you have a loss of  
 21 usable equipment?  
 22 A. I think that's part of it. But it's also you have  
 23 driveways and existing trees and roads you have to  
 24 make a chute under, all those obstacles add to the  
 25 cost. When you're in a new development area you just

1 A. All the way to the point --  
 2 Q. -- the urban renewal area?  
 3 A. -- next to the Weber feeder. And the reason I say  
 4 that is that there could be a squirrel or a pole  
 5 problem over here that would cause a problem in this  
 6 area of the power system. We would be able to  
 7 connect normally an open switch here and connect this  
 8 feeder to the Weber feeder and backfeed that entire  
 9 feeder from the Weber substation. So I think  
 10 reasonably everybody along the feeder benefits from  
 11 all of the components on that feeder.  
 12 Q. Okay. Now, do you ever bury anywhere else without it  
 13 being ordered by ordinance? Do you bury lines for  
 14 any other reason, that NSP makes the determination to  
 15 bury those lines? I know if I'm a homeowner and I  
 16 request it then I pay for that. But I want to know  
 17 if you bury feeder lines or transmission lines. I  
 18 know you don't bury 69K but --  
 19 A. We would not -- our standard would not be to bury  
 20 transmission lines. Our standard is not to bury this  
 21 kind of feeder line. In newer areas of town where we  
 22 have new residential developments we do bury the  
 23 lateral lines, extend from the feeder line, and the  
 24 wires that go from the transformers into the back  
 25 yards or connect the homes. Where there's a new

1 sort of plow this underground.  
 2 Q. It actually goes in before most of the improvements.  
 3 A. Right.  
 4 Q. One other question I'd have, you said there's three  
 5 hundred customers in that urban renewal area. How  
 6 many of those customers have underground service?  
 7 A. I don't know the answer to that without checking.  
 8 Q. I mean, if much of that area had been underground --  
 9 A. Much of downtown Sioux Falls is already underground,  
 10 yes. There's very little remaining overhead.  
 11 CHAIRMAN BURG: Okay.  
 12 EXAMINATION BY COMMISSIONER NELSON:  
 13 Q. Is there anywhere else that you have to have these  
 14 underground cables by ordinance or is it just in the  
 15 urban renewal area, or is it anywhere where they have  
 16 to cover, unbury a street, whatever, because one of  
 17 the problems I have is it sets a precedent here of a  
 18 way of financing these things. You know, so how big  
 19 a problem is this?  
 20 A. I think this ordinance requires us to do this burying  
 21 in the urban renewal area which is defined as being  
 22 downtown Sioux Falls.  
 23 Q. But an urban renewal area, they could declare  
 24 anything an urban renewal area, anything that they  
 25 wanted -- that's slighted that they wanted to fix

25

1 up.

2 A. At the present time the ordinance only defines a

3 certain area downtown.

4 EXAMINATION BY MS. AILTS WIEST:

5 Q. So if it was a residential area and you had to bury

6 -- and it wasn't a new area -- but they are required

7 by city ordinance to bury the lines, would NSP's

8 position be the whole city benefited then?

9 A. I would have to speculate, counsel -- Your Honor. We

10 have to take that on a case-by-case basis. I need to

11 know more facts before I could comment on what our

12 perspective would be.

13 Q. Is it because it's a business area? Is that their

14 rationale that everyone in Sioux Falls benefits but a

15 residential area would not be all the citizens of

16 Sioux Falls that benefited?

17 A. Well, I think again because we have an existing

18 ordinance that defines an urban renewal area, and it

19 clearly requires us to move those facilities

20 underground, and I refer back to my logic that that

21 ordinance is passed by the city council who represent

22 all of the citizens of Sioux Falls.

23 Q. Right. So under that logic wouldn't it be NSP's

24 position that a residential area that was required by

25 city ordinance to be buried, that the benefitting

1 a section that deals with that issue if I can find

2 it. Well, in Section 5 of our tariff book, it's

3 entitled "Standard Installation and Extension of

4 Rules," and in that I believe are the -- there's the

5 tariff that guides us in making that determination.

6 MS. AILTS WIEST: Thank you. Did the

7 commissioners have any more questions?

8 COMMISSIONER SCHOENFELDER: I have one more.

9 EXAMINATION BY COMMISSIONER SCHOENFELDER:

10 Q. Do you know, now this is just if you know, that the

11 municipal utility at the Washington Pavilion, in that

12 area, are those all underground or does the municipal

13 utility have overhead lines? Do you know?

14 A. Well, the municipal utility does have overhead lines

15 in Sioux Falls.

16 Q. In that urban renewal area is what I'm really asking

17 you, Mr. Wilcox.

18 A. I don't know that.

19 COMMISSIONER SCHOENFELDER: Okay.

20 CHAIRMAN BURG: I have one more.

21 EXAMINATION BY CHAIRMAN BURG:

22 Q. I think I need you to put that map up again. This

23 one.

24 A. Okay.

25 Q. On that map where is that feeder line within the

1 customer would be the people of Sioux Falls?

2 A. I'm hesitant to speculate.

3 MR. GERDES: I'll object to the question as

4 being speculative.

5 COMMISSIONER NELSON: Well, I guess he should

6 have -- I feel he should answer the question.

7 MS. AILTS WIEST: I think he did. I think he

8 probably answered it.

9 Q. And just to clarify, do you anticipate that more

10 lines will have to be buried in this urban renewal

11 area?

12 A. I apologize, I'm not prepared. I don't know exactly

13 the number and the length of lines, overhead lines

14 remaining in the urban renewal area. I neglected to

15 research that.

16 Q. And if they did would it be NSP's position that again

17 all the customers of Sioux Falls would benefit and

18 pay for those lines?

19 A. If there were no other customers that could benefit

20 or provide incremental revenue that would justify it,

21 the project.

22 Q. Do you have any guidelines for how much incremental

23 revenue is provided where NSP then decides that they

24 will not charge anyone else for those lines?

25 A. Yes, we have -- I believe we do. The tariff book has

1 urban renewal area? We know -- I know the part of

2 course that's on 12th Street because you had to

3 rebuild that. Where does it go from where you

4 rebuilt it?

5 A. It -- I believe it comes up in the mid-block between

6 Second and First Avenues and then cuts across, it

7 becomes underground at that point on 12th Street,

8 goes approximately two or two-and-a-half blocks to

9 mid-block on 12th Street between Main and Phillips

10 and then continues north where at some point here it

11 connects with the Weber Avenue feeder.

12 Q. But on through -- on through the rest of the urban

13 renewal area where would your line go --

14 A. Well --

15 Q. -- even beyond the Weber feeder? Again, maybe if I

16 finish the purpose of my question, I would like to

17 know how much more line you have within the urba

18 renewal area that's not buried because that could be

19 an indication that at some point we will have to face

20 this again whenever there's construction on those

21 streets, because the way I understand the ordinance

22 that if the street's being rebuilt you're required to

23 bury it.

24 A. Right. I don't know the answer to that now,

25 Commissioner. I can find out though.

26

1 CHAIRMAN BURG: Okay.  
 2 EXAMINATION BY MR. RISLOV:  
 3 Q. Jim, you have normal undergrounding tariffs on file  
 4 with the commission. Correct?  
 5 A. Yeah.  
 6 Q. I just want to be certain about this because we've  
 7 talked about definition. What's your definition of  
 8 benefited customers in that normal or that usual  
 9 underground tariff?  
 10 A. Well, I think it would normally be the customers or  
 11 group of customers who requested these underground  
 12 facilities.  
 13 Q. Or the ones who receive the service essentially. Is  
 14 that correct?  
 15 A. Yes.  
 16 Q. Now, I guess what I haven't heard tonight is you're  
 17 making a distinction, I think, in definition because  
 18 this is an urban renewal district. And I would be  
 19 interested in hearing what your definition of urban  
 20 renewal district is and why it's necessary to make  
 21 that distinction. I mean, is it a park? Is it a  
 22 national historic site? I mean, why the distinction?  
 23 A. I'm sorry, the distinction between what though?  
 24 Q. Between the benefited customers perhaps tonight where  
 25 you've defined it as all of the NSP customers in

1 the lawful municipal order.  
 2 Q. The reason I ask is that you've made a distinction  
 3 from the normal definition of benefited customer.  
 4 And I realize there's a city ordinance, but there are  
 5 other city ordinances for undergrounding, too, where  
 6 you're assessing individual customers on a  
 7 month-by-month basis. That's it.  
 8 CHAIRMAN BURG: That made me think of one more.  
 9 EXAMINATION BY CHAIRMAN BURG:  
 10 Q. What's the size of this line?  
 11 A. In terms of voltage?  
 12 Q. Yeah.  
 13 A. Thirteen thousand eight hundred volts.  
 14 Q. Do you bury any of those -- is there any of those  
 15 lines buried anywhere else because I know the  
 16 determination of undergrounding depends somewhat on  
 17 size, doesn't it?  
 18 A. It does. There are cases where we bury 13,800  
 19 volts. I can think of an example east of Sioux Falls  
 20 on one of the roads that goes to Brandon, you follow  
 21 10th Street east, and I think that's Highway 38. And  
 22 as you go down the hill towards the Big Sioux River  
 23 bridge there's a curve. And it's typically kind of a  
 24 treacherous curve, and the State of South Dakota had  
 25 required or requested us to -- we were redoing that

1 Sioux Falls versus the ones actually receiving the  
 2 underground service. And I think it hinges on your  
 3 definition of urban renewal.  
 4 A. I believe that the definition of urban renewal that  
 5 we've been using is that as defined by city  
 6 ordinance.  
 7 Q. But what makes it special? What makes it different  
 8 from any other undergrounding customer?  
 9 A. If I understand the question correctly, I've been  
 10 relying on the city ordinance to define urban renewal  
 11 area and the fact that the ordinance also requires us  
 12 to bury overhead lines within that urban renewal  
 13 area.  
 14 Q. For what purpose? Aesthetics alone? That's what  
 15 you're claiming. I mean is it -- I hate to interrupt  
 16 but maybe I can make this clearer. I'm getting the  
 17 impression that you think perhaps this is of  
 18 historical significance or maybe similar to a city  
 19 park or just an overall city improvement that's  
 20 somehow assessable to all customers, some type of  
 21 city monument, if you will.  
 22 A. I guess I have my own personal view as to why the  
 23 ordinance exists. I'm not sure that it is -- that my  
 24 own view is that important. The fact is that the  
 25 ordinance does exist and we're trying to comply with

1 line and they asked us to bury some of that line so  
 2 that traffic that might slide off that road, it  
 3 doesn't crash into a pole.  
 4 Q. Would it be accurate to say that if the normal  
 5 distribution line to a residence or even a business  
 6 is of a size that only that one is benefited by that  
 7 cable, and this one benefits a whole variety of  
 8 people because of its size?  
 9 A. I believe that to be true.  
 10 Q. So --  
 11 A. Yes.  
 12 Q. So it's hard to make the same benefited customer for  
 13 one that serves just that customer as compared to a  
 14 large line that serves a broad area.  
 15 A. Yes.  
 16 CHAIRMAN BURG: That's all.  
 17 MS. AILTS WIEST: Any other questions from the  
 18 Commissioners? Any redirect, Mr. Gerdes?  
 19 MR. GERDES: Just a few things.  
 20 REDIRECT EXAMINATION BY MR. GERDES:  
 21 Q. Taking one of the more recent things first,  
 22 Mr. Rislov asked you what makes the urban renewal  
 23 area special. And just so I'm understanding your  
 24 testimony, but it's your testimony that the fact it  
 25 was dealt with by ordinance of the City of Sioux

27

1 Falls and that ordinance was applied to NSP, is that  
2 what made it special in your mind?

3 A. Yes.

4 Q. What happens to NSP if you don't follow their  
5 ordinances?

6 A. Well, I'm not sure. I'm not sure I want to find out  
7 either.

8 Q. You do have a franchise with the City of Sioux Falls,  
9 do you not?

10 A. Not with Sioux Falls.

11 Q. Excuse me, but you have to cooperate with the City of  
12 Sioux Falls?

13 A. Certainly.

14 Q. So that you can use the rights-of-way, the streets  
15 and alleys. Correct?

16 A. Absolutely.

17 Q. And does the City of Sioux Falls have control over  
18 whether you can or cannot use the rights-of-way?

19 A. Yes, they do.

20 Q. All right. Going back to Commissioner Schoenfelder's  
21 question, would you look at the second page on  
22 Exhibit 3, which is your tariff, Part B, "Urban  
23 Renewal." And you and Commissioner Schoenfelder were  
24 talking about what the first sentence means. Would  
25 you read the second sentence to the commission,

1 transmission lines. Then they have to be relocated  
2 only -- they have to be paid for.

3 MS. AILTS WIEST: Any other questions?

4 COMMISSIONER NELSON: Are you relying on that  
5 whole sentence or only part of the sentence because  
6 the rest of the sentence says that the requesting  
7 party arranges to pay such costs. It seems to me the  
8 city was the requesting party and they made no  
9 arrangement to pay for the cost.

10 MR. GERDES: They made arrangement for the cost,  
11 Commissioner, through their ordinance, I believe, and  
12 through -- and that would be our position.

13 COMMISSIONER NELSON: Explain to me how they did  
14 that in the ordinance.

15 MR. GERDES: The ordinance relies on this  
16 tariff. It's circuitous reasoning, I'll admit, but  
17 the ordinance relies on this tariff and this tariff  
18 can charge back the benefiting customers as does the  
19 ordinance.

20 COMMISSIONER NELSON: Seems to me that NSP is  
21 making a lot of selective reading of the ordinance,  
22 the tariffs, and not -- we don't take all of the -- I  
23 mean, you like to pick out a sentence or two. And I  
24 can pick out a sentence or two that would not support  
25 your case and you pick out another sentence or two

1 please, that begins main feeder lines?

2 A. "Main feeder lines or transmission lines that pass  
3 through an urban renewal area and serve other areas  
4 will be relocated or undergrounded only if the  
5 requesting party arranges to pay such costs."

6 Q. And do I understand correctly that this line which is  
7 the subject of our testimony today is a main feeder  
8 line or transmission line. Is that correct?

9 A. It is a main feeder line, yes.

10 Q. And it is going through an urban renewal area, is it  
11 not?

12 A. Yes.

13 MR. GERDES: Thank you. That's all I have.

14 MS. AILTS WIEST: But your position is you're  
15 relying on 5.5(A), Mr. Wilcox, not B?

16 MR. GERDES: I think, Your Honor, that we are  
17 relying on both depending upon the way the commission  
18 wants to find the facts.

19 MS. AILTS WIEST: Well, I guess on B are you  
20 saying that this is an urban renewal area wherein 75  
21 percent or more of the buildings are being  
22 demolished?

23 MR. GERDES: No. I'm relying on the second  
24 sentence, which is the separate concept, and that is  
25 where we're talking about main feeder lines and

1 that does.

2 MR. GERDES: I think I've answered your  
3 question.

4 MS. AILTS WIEST: Any other questions for this  
5 witness? If not, Mr. Gerdes, do you have any other  
6 witnesses?

7 MR. GERDES: No, I do not.

8 MS. AILTS WIEST: Ms. Cremer?

9 MS. CREMER: Staff would call Heather Forney,  
10 but at this time if the public would like to speak,  
11 because I think some of them may be able to answer  
12 the question as to what it cost them to reconnect.  
13 I'm not sure. It is my understanding some are here.  
14 Then at that point we would like to testify after the  
15 public.

16 MS. AILTS WIEST: Is there any member of the  
17 public that would like to testify at this time? You  
18 will be sworn in and subject to cross-examination.  
19 Sir. Could you come up here, please, and sit?

20 VIRGIL BENZ,  
21 called as a witness, being first duly sworn,  
22 testified and said as follows:

23 MR. BENZ: I'm Virgil Benz, and I'm also a  
24 landlord in Sioux Falls and before that I was a  
25 contractor and I done a lot of work with Northern

States Power.

COMMISSIONER SCHOENFELDER: Spell your last name, please.

MR. BENZ: And I only have an eighth grade education, but twenty-seven years ago if somebody told me that I had to do something I would certainly have figured out a way how I would have done it without doing this way and charging it.

COMMISSIONER SCHOENFELDER: Could you spell your last name?

MR. BENZ: B-E-N-Z.

COMMISSIONER SCHOENFELDER: Thank you.

MR. BENZ: And that's what upsets me. I didn't realize -- I didn't come down here. I didn't bring no speech. All I brought down here is what I got charged for. I got charged for -- I own four house meters. I got charged them. I had three vacancies so I got charged for them, and my own home address.

MS. AILTS WIEST: Anything else, sir?

MR. BENZ: Not to my knowledge. But it kind of makes me a little disappointed on our NSP men if they didn't figure that out twenty-seven years ago that they ought to do something with the city or else. It's really discouraging. Thank you.

MS. AILTS WIEST: Did anyone else have any

MS. AILTS WIEST: If you'd like to make any testimony we would be happy to hear it.

MR. NAVIN: Well, I don't understand the benefited customers. You have people that live in Tea. They work in Sioux Falls. They work in the downtown area and they don't pay the fee. You have people in Brandon, Harrisburg. You have people that work downtown and live on an acreage outside of Sioux Falls. They weren't charged the fee. I guess I don't think that's fair. I guess that's my statement.

MS. AILTS WIEST: Okay. Thank you. Any questions? Thank you. Did anyone else care to testify tonight? Ms. Cremer?

MS. CREMER: Yes.

MS. AILTS WIEST: I don't think anyone else is testifying.

MS. CREMER: We're checking.

MS. AILTS WIEST: Okay.

MS. SUSAN MANTZ: I've been elected to come up.

SUSAN MANTZ,  
called as a witness, being first duly sworn,  
testified and said as follows:

MS. MANTZ: My name is Susan Mantz. I am one of the owners of Spencer Furniture which is on the

testimony that they would like to give at this time?

DAN NAVIN,

called as a witness, being first duly sworn,  
testified and said as follows:

MR. NAVIN: My name is Dan Navin, and I'm a homeowner here in Sioux Falls, and I'd like to just address a couple of questions here. Being this was for aesthetics, did anybody from the city ask what it was going to cost before you started, Mr. Wilcox?

MR. GERDES: We'll object.

MS. AILTS WIEST: I guess at this point we're just looking for testimony rather than questions. If you had anything that you wanted to put on the record.

MR. NAVIN: Well, okay. Let's get back to the benefited people then. I live in the Kingswood area way out in southwest. So if I lived on an acreage another half a mile I would not be benefited. Right? If I lived on an acreage outside of Sioux Falls I would have to pay the \$2.16. Is that correct?

MS. AILTS WIEST: I guess my problem is at this point we're not really supposed to be answering questions.

MR. NAVIN: I see.

infamous 12th Street. We are one of the businesses that was required to pay for the hook-up. I guess the only thing that we had to say at this point is that the expenses to us as -- for paying for the hook-up were somewhere between the amount of \$2,500 to \$3,000. We can get you the specific amount of the check, but that to our memory is the best recollection that we have. That's all I have.

MS. AILTS WIEST: Any questions?

CHAIRMAN BURG: Do you live on the north side of 12th Street?

COMMISSIONER NELSON: She has a business.

MS. MANTZ: I am one of the owners of the business and we are on the north side. I'm terrible with directions. I'm sorry.

CHAIRMAN BURG: From your knowledge do you know if anybody on the other side of street also was required, because I asked that question earlier.

MS. MANTZ: I do not know. However, directly across the street from us is the Federal Building. I don't know how that, you know, comes -- that takes a whole block. And then across further down from that is a -- are two residential homes that I believe are apartment houses. And then there's a chiropractic clinic. And going the other direction from the

1 Federal Building I believe it's another apartment  
2 house and so I have no idea.

3 COMMISSIONER SCHOENFELDER: I have one. As a  
4 business owner, strictly as a business owner and  
5 living in that area, having those buried underground,  
6 has that been beneficial? Has it -- what's it done  
7 to enhance your building, your business? Is it  
8 something you really -- you care about?

9 MS. MANTZ: I guess I would say no, it's not  
10 probably something that made a big difference to us.  
11 The way that we were approached is that we had no  
12 choice in the matter, that it had to happen. We had  
13 no choice.

14 COMMISSIONER SCHOENFELDER: Who approached you?

15 MS. MANTZ: I believe we were actually advised  
16 of this by Main Street are the people who told us  
17 that it had to happen. The construction company  
18 talked to us early on in the process, but didn't  
19 specifically advise us about the electrical  
20 connections. As far as the aesthetics of it, where  
21 there was a pole before we have a nice green light.  
22 You know, if that makes a difference.

23 COMMISSIONER SCHOENFELDER: A nice green light?

24 MS. MANTZ: Yeah. One of those decorative  
25 lights that they put in the downtown district.

1 MS. MANTZ: I don't believe we did.

2 CHAIRMAN BURG: Okay. Thank you.

3 MS. AILTS WIEST: Thank you. Anyone else from  
4 the public who would care to testify?

5 COMMISSIONER SCHOENFELDER: If there's anyone  
6 here from the city that would like to give testimony  
7 or explain to us on behalf of the city, I would be  
8 happy to have them come forward and tell us the  
9 city's position.

10 LYLE JOHNSON,  
11 called as a witness, being first duly sworn,  
12 testified and said as follows:

13 MS. AILTS WIEST: State your name.

14 MR. JOHNSON: My name is Lyle Johnson.

15 MS. AILTS WIEST: And who do you work for?

16 MR. JOHNSON: I work for the City of Sioux  
17 Falls.

18 MS. AILTS WIEST: Did you have a specific  
19 question? You want to restate it?

20 COMMISSIONER SCHOENFELDER: I guess I would just  
21 like to know why the city -- you know, the city  
22 ordered this and why you just didn't pay for it out  
23 of tax dollars, which would really be of benefit to  
24 everybody in Sioux Falls, and could you give me the  
25 explanation for that and who do you think should pay

1 COMMISSIONER SCHOENFELDER: I thought you meant  
2 a stoplight.

3 MS. MANTZ: No, no, no.

4 COMMISSIONER SCHOENFELDER: I just had to make  
5 sure which green light you were talking about. But  
6 you don't think that's enhanced or helped your  
7 business out by having those buried?

8 MS. MANTZ: No, I don't think it has. No.

9 COMMISSIONER SCHOENFELDER: That's all I have.

10 MR. GERDES: Ma'am, would you spell your last  
11 name for us?

12 MS. MANTZ: Oh, yes. M-A-N-T-Z.

13 MR. GERDES: Thank you.

14 MS. AILTS WIEST: Thank you.

15 CHAIRMAN BURG: I have another one. Were you --  
16 I don't think you probably personally were, but was  
17 your business in business when the ordinance was  
18 passed?

19 MS. MANTZ: Yes.

20 CHAIRMAN BURG: Do you know that -- were you  
21 involved in the business?

22 MS. MANTZ: Not that long ago.

23 CHAIRMAN BURG: I didn't think so. But do you  
24 know if they had any input into that, into the  
25 designation as an urban renewal area?

1 for it?

2 MR. JOHNSON: Okay. If I could, if I could just  
3 kind of walk through what happened.

4 COMMISSIONER SCHOENFELDER: Please do that.

5 MR. JOHNSON: Last January I was serving -- I am  
6 Director of Public Works and our city engineer had  
7 retired and I was serving as acting city engineer.  
8 Our project manager for that project on 12th Street  
9 approached me that he had been requested, I think, by  
10 a representative from Main Street Sioux Falls to have  
11 the overhead power lines from NSP located  
12 underground.

13 I made the contact with I think it was Clark  
14 Hendrickson of NSP at that time, early in the year,  
15 January or February, and discussed the matter with  
16 him. He gave me a cost of roughly seventy-five to  
17 one hundred thousand dollars. They had done no  
18 engineering on it and he didn't know what the exact  
19 cost would be.

20 He also informed me that he thought there was  
21 approximately four customers that would be impacted  
22 and would have to upgrade their service at the same  
23 time at a cost of approximately a thousand dollars.

24 I told him that standard practice with the city  
25 is when the utility is in the right-of-way and must

1 be relocated the utility pays for that cost, whether  
2 it's going from overhead to underground or just  
3 moving it two feet. When the utility is outside the  
4 right-of-way the city then picks up the cost for  
5 moving the utility.

6 I did not hear again from Clark, and as Jim  
7 discussed we had some conversations. I don't know  
8 the exact date but it was later on last year. And  
9 Jim told me what the cost would be and asked me if  
10 the city would pay for that cost.

11 Again, we discussed the way the city handles  
12 relocation of utilities in the right-of-way. I also  
13 told him that we didn't have any funds specifically  
14 budgeted for utility relocation on that project. We  
15 had our own electric utility that had to be  
16 relocated. They had funds budgeted but we didn't  
17 have any in the street project for any other  
18 utilities to relocate.

19 Jim called me back shortly thereafter and  
20 discussed the mechanism that they were going to be  
21 proposing was to bill all Sioux Falls customers for  
22 the cost of the relocation. I was not involved in  
23 the writing of the ordinance back in 1973. I was  
24 just acting on behalf of the city enforcing the  
25 ordinance that was currently in place.

1 been outside the city control and the utility was  
2 there first, they may own an easement or have an  
3 easement outside of the right-of-way and have their  
4 utilities there. If we expand the street width, and  
5 as a result the utility has to move, and they are  
6 outside the right-of-way, we pick up the cost of  
7 having to move that. And in some cases it's fairly  
8 substantial. We've had bills three, four hundred  
9 thousand dollars to move those.

10 COMMISSIONER SCHOENFELDER: But you're talking  
11 about when the city requires relocation, not just  
12 when this --

13 MR. JOHNSON: Yes.

14 COMMISSIONER SCHOENFELDER: That's what I  
15 misunderstood. Thank you.

16 COMMISSIONER NELSON: You said that Main Street  
17 Sioux Falls brought it to your attention, that they  
18 wanted the cables buried underground, the wires  
19 underground. Is that right?

20 MR. JOHNSON: The information that my project  
21 manager brought to me was he was contacted by a  
22 member of Main Street.

23 COMMISSIONER NELSON: So what would have  
24 happened if Main Street Sioux Falls wouldn't have  
25 brought it to your attention? Would the cables not

1 COMMISSIONER SCHOENFELDER: Can you tell me if  
2 the municipal utility lines are buried in that urban  
3 renewal area?

4 MR. JOHNSON: I don't think all of them are, but  
5 as the street is reconstructed we do the same thing.

6 COMMISSIONER SCHOENFELDER: You're doing the  
7 same thing?

8 MR. JOHNSON: We had some electric lines that  
9 had to be relocated as part of this 12th Street  
10 project, and the power lines to the Washington  
11 Pavilion are also buried in the area.

12 COMMISSIONER SCHOENFELDER: Go back over the  
13 right-of-way situation with me. I don't think I was  
14 listening as good as I should have been. You said  
15 when you have relocation and it's in the right-of-way  
16 you make the utility pay, but if it's not in the  
17 right-of-way the city pays?

18 MR. JOHNSON: That's correct.

19 COMMISSIONER SCHOENFELDER: I don't understand.

20 MR. JOHNSON: The city has jurisdiction over the  
21 street right-of-way.

22 COMMISSIONER SCHOENFELDER: Right.

23 MR. JOHNSON: And in many cases utilities -- we  
24 require utilities to locate in the right-of-way, but  
25 in many areas, either in developing areas that have

1 have been -- the wires not had to have been buried?

2 MR. JOHNSON: No. It would have still been a  
3 requirement. It may have been something that we  
4 missed on the project.

5 COMMISSIONER NELSON: You mean the project would  
6 have taken -- been pursued without ever having buried  
7 them?

8 MR. JOHNSON: I would assume we would have  
9 caught it at some point in time. It was a good thing  
10 we caught it at that time before the street  
11 construction even began.

12 COMMISSIONER NELSON: And if the city -- you  
13 also said that the city would require themselves to  
14 meet the same standard that they're requiring of NSP  
15 if their wires had to be relocated because of the  
16 urban renewal district.

17 MR. JOHNSON: That's correct.

18 COMMISSIONER NELSON: Now, how would you assess  
19 those costs?

20 MR. JOHNSON: Our cost for routine capital  
21 improvements like that are built right into our rate  
22 structure. This is very common to have to relocate  
23 wires or pipes for water or whatever.

24 COMMISSIONER NELSON: So you're saying it would  
25 be recovered through the people who pay --

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1 MR. JOHNSON: The rates.  
 2 COMMISSIONER NELSON: -- the municipal rates?  
 3 MR. JOHNSON: That's correct.  
 4 COMMISSIONER NELSON: Interesting.  
 5 COMMISSIONER SCHOENFELDER: However, you  
 6 couldn't expect NSP to do that for all their  
 7 customers because many of their customers live  
 8 outside the City of Sioux Falls. Would that be  
 9 true? You wouldn't expect the people who live in  
 10 Fedora to pay for relocating the lines in Sioux  
 11 Falls, would you?  
 12 MR. JOHNSON: As far as how NSP recovers those  
 13 costs, that's really an issue for them. We don't  
 14 regulate their rates, of course. You folks do.  
 15 COMMISSIONER SCHOENFELDER: But your ordinance  
 16 says that there's a benefited customer. And if by --  
 17 NSP would not have the power to assess anyone other  
 18 than their own customers. And so you're saying then  
 19 that anyone that's served by the co-op that lives in  
 20 Sioux Falls, or anyone that's served by the municipal  
 21 would not have benefited. Is that what you're  
 22 saying? Because it just stands to reason if the  
 23 whole public in Sioux Falls is the benefited customer  
 24 then it ought to be the whole public, not just the  
 25 NSP customers.

1 COMMISSIONER NELSON: He answered it.  
 2 MR. GERDES: I have no questions.  
 3 MS. CREMER: I have just one for Mr. Johnson.  
 4 Correct me if I'm wrong. Are people in the urban  
 5 renewal district, are they assessed an urban renewal  
 6 charge in some manner? Do the people within that  
 7 district that Mr. Wilcox laid out, is there any sort  
 8 of special assessment on them?  
 9 MR. JOHNSON: For infrastructure there isn't. I  
 10 don't know about the details of any kind of urban  
 11 renewal. I'm not in charge of that. I'm only in  
 12 charge of the infrastructure.  
 13 MS. CREMER: Okay. But as far as you know they  
 14 don't pay an urban renewal assessment? You just  
 15 don't know?  
 16 MR. JOHNSON: I don't know.  
 17 MS. CREMER: Okay. That's all I have.  
 18 MS. AILTS WIEST: Thank you.  
 19 COMMISSIONER NELSON: After that maybe --  
 20 Ms. Mantz, if she could come back.  
 21 COMMISSIONER SCHOENFELDER: Call her  
 22 back.  
 23 CHAIRMAN BURG: I have an additional question  
 24 for Jim. Doesn't make any difference.  
 25 (Mr. Jim Wilcox resumes the witness stand.)

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1 MR. JOHNSON: I assume that's correct, yes. I  
 2 won't quarrel with that.  
 3 COMMISSIONER SCHOENFELDER: But how do you  
 4 assess the benefited customers, other than the city  
 5 doing it? If all the people who live within the City  
 6 of Sioux Falls are benefited customers, then how do  
 7 you get everyone to pay if NSP doesn't have the  
 8 authority to do that?  
 9 MR. JOHNSON: I don't think we have said that  
 10 NSP doesn't have the authority to do that. That's  
 11 not been the city's position.  
 12 COMMISSIONER SCHOENFELDER: How would NSP assess  
 13 Sioux Valley's customers?  
 14 MR. JOHNSON: I don't know how they could.  
 15 We've had NSP relocate power lines in the downtown  
 16 area before and there was no surcharge, to my  
 17 knowledge. And this is the first time I was aware  
 18 that there was a surcharge involved.  
 19 COMMISSIONER SCHOENFELDER: That's all I have.  
 20 COMMISSIONER NELSON: Perhaps -- I guess I have  
 21 a question for Jim if they've ever assessed the costs  
 22 before. They never did it before?  
 23 MS. AILTS WIEST: Mr. Gerdes, do you have any  
 24 questions of this witness?  
 25 CHAIRMAN BURG: I would be happy to answer that.

1 EXAMINATION BY CHAIRMAN BURG:  
 2 Q. Does NSP provide any services to the municipal  
 3 utility?  
 4 A. NSP is a supplemental wholesale supplier of the  
 5 electricity for the City of Sioux Falls municipal  
 6 utility.  
 7 Q. Does this line in any way enhance, because this is a  
 8 large line, does this in any way enhance the  
 9 municipal utility services?  
 10 A. No, I don't think so.  
 11 Q. There's not an inter-tier or anything?  
 12 A. Not really. NSP connects with the City of Sioux  
 13 Falls with three 69-KV points. Two of them are near  
 14 the water treatment plant on North Minnesota and the  
 15 other is out near the wastewater treatment facility.  
 16 Q. So this does not in any way serve the city lines that  
 17 are in that area?  
 18 A. No. We're electrically separate except for those  
 19 three interconnection points.  
 20 COMMISSIONER NELSON: Could I ask Susan Mantz to  
 21 come back, too. I have a question.  
 22 MR. GERDES: While he's here can he answer  
 23 Commissioner Nelson's question about whether you  
 24 know, the prior undergrounds and whether or not those  
 25 are accepted. Actually he did say it once before.

1 CHAIRMAN BURG: I answered it for her.  
 2 MR. GERDES: All right.  
 3 CHAIRMAN BURG: I reminded her of the answer.  
 4 Let's put it that way.  
 5 MS. AILTS WIEST: Who would you like to recall?  
 6 COMMISSIONER NELSON: Susan Mantz.  
 7 (Ms. Susan Mantz resumes the witness stand.)  
 8 COMMISSIONER NELSON: Do you know if there's an  
 9 urban renewal fee that you pay for belonging to  
 10 this --  
 11 MS. MANTZ: As far as I know we are not assessed  
 12 a so-called urban renewal fee. We pay a -- what's  
 13 called a downtown economic development improvement  
 14 fund fee.  
 15 COMMISSIONER NELSON: And who do you pay that  
 16 to?  
 17 MS. MANTZ: To the city, I believe.  
 18 COMMISSIONER NELSON: Do you know what it is? I  
 19 mean, is it based on a certain thing or does  
 20 everybody pay a flat rate?  
 21 MS. MANTZ: I don't know if I know that. I just  
 22 know they give us the bill. How's that?  
 23 A WITNESS: There's a regular tax and then  
 24 there's another tax that comes on the real estate.  
 25 It's to beautify downtown. And you pay it to the

1 CHAIRMAN BURG: Would you be sworn in so you can  
 2 answer it for me, please?  
 3 DAN SCOTT,  
 4 called as a witness, being first duly sworn,  
 5 testified and said as follows:  
 6 CHAIRMAN BURG: I wanted to get the perspective  
 7 of these dollars. Excuse me. Go ahead. You want to  
 8 give us your name, Dan?  
 9 MR. SCOTT: Dan Scott.  
 10 CHAIRMAN BURG: I wanted to get the perspective  
 11 of this assessment to be sure that it's accurate  
 12 while we're making this decision. So my question  
 13 was, as I understand it there's an assessment for  
 14 downtown improvement, I'll put it, as a broad form.  
 15 Is that limited to this urban renewal area?  
 16 MR. SCOTT: Yeah. Only -- but to complicate  
 17 matters just a little bit more --  
 18 CHAIRMAN BURG: Thanks.  
 19 MR. SCOTT: -- there is what's called a business  
 20 improvement district in downtown Sioux Falls. It  
 21 just happens that that business improvement district,  
 22 the boundaries correspond exactly to the urban  
 23 renewal area. It's actually the business improvement  
 24 district that benefits from the extra taxation that  
 25 these people are talking about. And that's actually

1 county, but it's assessed on your tax bill.  
 2 CHAIRMAN BURG: To follow up on that, does that  
 3 -- do those dollars go just in this urban renewal  
 4 area or is it a broader area?  
 5 COMMISSIONER NELSON: He has to be sworn in.  
 6 MS. MANTZ: That I have no idea how they  
 7 decide. I don't even know who decides where the  
 8 dollars go. I just know we have to pay it so I would  
 9 have no way --  
 10 CHAIRMAN BURG: If somebody has the answer to  
 11 that I would like to have them come up and clarify it  
 12 for us.  
 13 A WITNESS: I don't know where it goes but it  
 14 goes somewhere.  
 15 MS. CREMER: Do you know how much you pay,  
 16 Ms. Mantz? Do you know how much that is yearly? Is  
 17 it like twelve dollars or twelve hundred.  
 18 A WITNESS: A couple hundred dollars.  
 19 COMMISSIONER SCHOENFELDER: We need to get it on  
 20 the record, under sworn testimony.  
 21 MS. MANTZ: About six hundred dollars.  
 22 MS. CREMER: A year. Okay. Thank you.  
 23 CHAIRMAN BURG: Okay. Thank you. Did you have  
 24 the answer to my question?  
 25 MR. SCOTT: Yes.

1 -- it's not a flat fee. It's charged on a frontage  
 2 foot basis if I remember correctly.  
 3 CHAIRMAN BURG: Okay. I think that answers my  
 4 question.  
 5 MS. CREMER: Do you know what they do with those  
 6 dollars? Is there something in particular? It goes  
 7 to the city or the county? I wasn't clear.  
 8 MR. SCOTT: Well, I don't know that because I  
 9 don't know what the mechanism is that actually -- but  
 10 a lot of that money goes to fund an organization  
 11 called Main Street Sioux Falls. Somewhere in the  
 12 vicinity of \$90,000 a year, I think, of that business  
 13 improvement district money goes to Main Street Sioux  
 14 Falls. If you're not acquainted with that group it  
 15 basically is an economic development and promotions  
 16 group trying to draw more business to downtown Sioux  
 17 Falls.  
 18 MS. CREMER: Okay.  
 19 COMMISSIONER NELSON: But you pay this on your  
 20 taxes?  
 21 MR. SCOTT: Yeah. I believe that's how it's  
 22 paid is on -- right with the taxes, isn't it?  
 23 A WITNESS: Yeah, paid with the taxes.  
 24 A WITNESS: No, it isn't.  
 25 CHAIRMAN BURG: Are the members of this all

1 within the renewal area?  
 2 MR. SCOTT: Yes.  
 3 CHAIRMAN BURG: They're the only members; they  
 4 make the decision as well?  
 5 MR. SCOTT: As I recall there are a few  
 6 voluntary members that are outside the urban renewal  
 7 district or the business improvement district, but  
 8 very few.  
 9 COMMISSIONER SCHOENFELDER: But you don't assess  
 10 that to the residential people or do you?  
 11 MR. SCOTT: That I don't know.  
 12 COMMISSIONER SCHOENFELDER: The urban renewal  
 13 area there's three hundred of them.  
 14 A WITNESS: There's thirty. Thirty residential.  
 15 COMMISSIONER NELSON: Do they pay the tax? He  
 16 doesn't know?  
 17 MR. SCOTT: No, I don't know for certain how  
 18 that's done with residential.  
 19 MS. ALTS WIEST: Thank you. Ms. Cremer?  
 20 MS. CREMER: Yes. I believe Karen Spencer wants  
 21 to testify.  
 22 KAREN SPENCER,  
 23 called as a witness, being first duly sworn,  
 24 testified and said as follows:  
 25 MS. SPENCER: My name is Karen Spencer, and I am

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1 HEATHER FORNEY,  
 2 called as a witness, being first duly sworn,  
 3 testified and said as follows:  
 4 DIRECT EXAMINATION BY MS. CREMER:  
 5 Q. Would you please state your name and business address  
 6 for the record?  
 7 A. My name is Heather Forney and my business address is  
 8 500 East Capital, Pierre, South Dakota.  
 9 Q. And, Heather, who are you employed by?  
 10 A. I'm employed by the Public Utilities Commission as a  
 11 utilities analyst.  
 12 Q. Would you give us a brief description of your  
 13 educational and work background?  
 14 A. I graduated in May of 1993 with my bachelor's in  
 15 accounting from the University of South Dakota. And  
 16 I graduated in August of 1994 with my master's in  
 17 accounting from the University of South Dakota. I am  
 18 a certified public accountant in the state. I began  
 19 my work experience with McGladrey & Pullen LLP, a  
 20 CPA firm, in May of 1994 where I worked as a  
 21 financial institution specialist managing mostly  
 22 financial institution audits.  
 23 I moved on to the Department of Natural  
 24 Resources with the State of South Dakota in  
 25 approximately June of 1998 where I managed the clean

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1 am owner of Spencer Furniture.  
 2 MS. CREMER: And then I think you knew something  
 3 that nobody else knew about that assessment.  
 4 MS. SPENCER: I think probably because I pay  
 5 the bills. The assessment comes directly from the  
 6 city finance office, and it is paid directly to  
 7 them. And it comes in different forms. It's  
 8 not added to our taxes. There is a completely  
 9 different form that comes to the business owners in  
 10 the area.  
 11 MS. CREMER: And that's in that urban renewal  
 12 area as far as you know?  
 13 MS. SPENCER: Yes.  
 14 MS. CREMER: Is it anybody else?  
 15 MS. SPENCER: Not that I'm aware of.  
 16 MS. CREMER: Okay. That's all I have.  
 17 COMMISSIONER SCHOENFELDER: Do you know if  
 18 residential people there pay it?  
 19 MS. SPENCER: I do not believe so.  
 20 COMMISSIONER SCHOENFELDER: Thank you. I  
 21 needed to know that.  
 22 MS. ALTS WIEST: Thank you. Ms. Cremer, did  
 23 you want to call your witness?  
 24 MS. CREMER: Yes. I would call Heather  
 25 Forney.

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1 water and drinking water state revolving fund  
 2 program, and I accepted employment with the Public  
 3 Utilities Commission in August of 1999 where I  
 4 currently work.  
 5 Q. Are you familiar with the Docket EL99-019 which has  
 6 been referred to as NSP's One-Time Special  
 7 Underground Assessment?  
 8 A. Yes, I am.  
 9 Q. And what was your role in this docket?  
 10 A. I have had numerous discussions with Mr. Wilcox.  
 11 I've reviewed NSP's tariff, the Sioux Falls city  
 12 ordinance and information that has been submitted to  
 13 the commission on behalf of NSP.  
 14 Q. Does that include an internal project report that  
 15 dealt with the expenses of this project?  
 16 A. Yes, it did.  
 17 Q. What sort of analysis did you do of that report?  
 18 A. I did a number of things in conjunction with that  
 19 report. I did meet with Jim Wilcox, and I believe it  
 20 was Bill Brae, at NSP. We went through the system,  
 21 how NSP calculates, basically assesses charges to  
 22 certain projects and jobs. We looked at diagrams of  
 23 the project and how costs are assessed. Basically  
 24 projections are gone through. Based on that diagram  
 25 Mr. Brae goes through that and estimates what

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1 materials and labor and that sort of things will be  
 2 needed for the project.  
 3 He inputs it into their computer system and then  
 4 they will send material orders over to their  
 5 supplier. The supplier will have basically packets  
 6 of the materials that are needed, and that is all  
 7 input onto the computer system which then generates  
 8 this report.  
 9 I reviewed the report. I summed up the numbers  
 10 to make sure that the totals for the report were  
 11 correct. I randomly selected various line items in  
 12 the report and traced those back to some source  
 13 documents basically verifying that what NSP has given  
 14 us for a project total is accurate and verifying that  
 15 it would appear reasonable that the items that they  
 16 have listed on their project report would be used for  
 17 that specific project.  
 18 I did note that every -- everything that I  
 19 looked at, all types of vouchers, and that sort of  
 20 thing, did have this specific project code on it to  
 21 verify that it was going to the right project and it  
 22 wasn't accidentally mistyped or something to that  
 23 effect.  
 24 Q. Reread upon your analysis of that report do you feel  
 25 the project total that was used for the special

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1 assessment was reasonable?  
 2 A. Yes, I do.  
 3 Q. And can you briefly describe the additional work you  
 4 performed after you determined that the total project  
 5 costs were reasonable?  
 6 A. The next thing that I did was contact Mr. Wilcox to  
 7 make sure that the numbers they were using for the  
 8 total NSP customers in Sioux Falls area were  
 9 accurate. I believe as of October 25th, which is the  
 10 date that NSP used to determine the surcharge  
 11 allocation, there were approximately 53,000  
 12 NSP customers. And we went over NSP's methodology  
 13 for determining exactly who the Sioux Falls NSP  
 14 customers would be.  
 15 Q. And based on that calculation was the \$2.16  
 16 surcharge, was that a reasonable amount?  
 17 A. Yes, it was.  
 18 Q. Did you do an additional analysis of the effect of  
 19 the underlying project if it were to be assessed  
 20 to some other group than all of the NSP customers in  
 21 Sioux Falls?  
 22 A. Yes, I did. The analysis that I went through is  
 23 similar to basically what Mr. Wilcox and the  
 24 commissioners went through where they decided who  
 25 could be the potential benefiting customers be, various

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1 groups. I also came up with five options.  
 2 It could have been five, I believe it was 31 NSP  
 3 customers would have been located on both sides of  
 4 12th Street, both the north and south side of 12th  
 5 Street where the work was done. That was one of the  
 6 groups I used to do my analysis.  
 7 There were the seven NSP customers that were  
 8 located on the north side of 12th Street where the  
 9 work was done. So that would have been inside the  
 10 urban renewal area and along the street where the  
 11 project was done.  
 12 I did an analysis based on all of the NSP  
 13 customers located within the urban renewal area. I  
 14 believe there were 307 total NSP customers in that  
 15 area.  
 16 I did an assessment if it would have been  
 17 assessed to all of the citizens of the Sioux Falls  
 18 area. And I also looked at what would happen if NSP  
 19 were to bear the cost of the project themselves.  
 20 Q. Let's go through those five groups, if you would.  
 21 What's the effect if the project were to be assessed  
 22 to the NSP customers located on both sides of the  
 23 street where the project took place?  
 24 A. Like I said earlier, there are what we've determined  
 25 to be 31 NSP customers located on both sides of

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1 that. And that may seem like a high number, and  
 2 that's because there are, as I believe one of our  
 3 witnesses testified to, there are some apartment  
 4 buildings on the south side there. So there are some  
 5 apartment dwellers and that has increased the  
 6 number. If they were to allocate the cost to those  
 7 31 customers, they would have been assessed \$3,494.00  
 8 each.  
 9 Q. Now, I want to clarify, Heather, those are -- there's  
 10 31 NSP customers. We believe 21 are in apartments.  
 11 A. Yes.  
 12 Q. And that's along the 100 block of West 12th Street  
 13 and the 100 and 200 blocks of East 12th?  
 14 A. That is correct.  
 15 Q. All right. The amount was, again, \$3,494.00?  
 16 A. That's correct.  
 17 Q. For each of those. Okay. Let's then talk about the  
 18 effect if they were to be assessed to the NSP  
 19 customers located just on the north side of 12th  
 20 Street.  
 21 A. If NSP were to assess that surcharge to just the  
 22 seven NSP customers on the north side of 12th Street  
 23 where the project was done, it would have been a cost  
 24 of \$15,471.00 each.  
 25 Q. And is that in addition to what I believe Ms. Mantz

1 testified to the hook-up that they had to, or the  
 2 reconfiguration, whatever --  
 3 A. The would be in addition to their already, the  
 4 reconnection charges, or whatever you would call  
 5 that, yes.  
 6 Q. And what would be the effect if the project were to  
 7 be assessed to the NSP customers located within the  
 8 urban renewal area, and if you could give us the  
 9 numbers of people in that whole area?  
 10 A. Based on data that I was given from Mr. Wilcox there  
 11 are 307 total NSP customers located within the urban  
 12 renewal area. That would be 234 commercial; 33  
 13 industrial; and 40 residential. And the cost to each  
 14 of those customers would have been \$353.00.  
 15 COMMISSIONER SCHOENFELDER: Three hundred and  
 16 what?  
 17 MS. FORNEY: Fifty-three.  
 18 Q. And then what is the effect if the project were  
 19 assessed to all of the citizens in the City of Sioux  
 20 Falls?  
 21 A. I was not able to determine a number of actual  
 22 electrical customers within the City of Sioux Falls  
 23 because there are some co-ops and the municipal  
 24 electric services as well. So I couldn't do a  
 25 complete analysis and break it down into a dollar

1 immediate for NSP to justify the assessment. I  
 2 believe that the entire community has benefited from  
 3 increased access to the downtown area, safety to  
 4 downtown business and pedestrian customers,  
 5 improve the appearance of the downtown area, those  
 6 types of things, the aesthetics, as was mentioned by  
 7 the commission. I don't think that in order to  
 8 benefit it needs to be a direct and immediate  
 9 benefit.  
 10 Q. Based upon the analysis that you have given of those  
 11 five groups, do you have a recommendation?  
 12 A. Well, it is my opinion that to allocate amongst the  
 13 subgroups that I've already discussed, the people on  
 14 the north side of the street, people on the north and  
 15 south side of the street, people just in the urban  
 16 renewal area, these are people that did not request  
 17 that project and it would be an unfair burden,  
 18 especially to the business owners located immediately  
 19 along the area, to expect them to pay such an  
 20 astronomical fee for something that they really  
 21 didn't have any say-so.  
 22 I honestly believe that the city as the cost  
 23 causer should have, should have paid for this  
 24 project. I don't know that we have the authority to  
 25 force that, but I do think that NSP has allocated

1 value. You could, I think, roughly estimate or  
 2 safely assume that it would be something less than  
 3 the \$2.16 though.  
 4 Q. And if NSP were to absorb all of the costs of the  
 5 project themselves, what effect, if any, would there  
 6 be on the company's next rate case?  
 7 A. Well, I believe that the commission staff in the past  
 8 has generally taken the position of disallowing items  
 9 in rate base that were unnecessary for the rendition  
 10 of safe, adequate, and reliable electrical service.  
 11 So I believe that it's possible that staff would  
 12 disallow this, and basically NSP would be forced to  
 13 absorb this through their shareholders.  
 14 Q. And, again, you believe that it would be disallowed  
 15 because it was not necessary?  
 16 A. Yes. They were replacing lines that were already --  
 17 they were effective. They were providing adequate  
 18 service. The people that were already hooked up were  
 19 receiving electrical service without problems to my  
 20 knowledge.  
 21 Q. Heather, do you have an opinion regarding who are the  
 22 benefited customers in this case?  
 23 A. Yes, I do. I believe that the entire city can be  
 24 determined to have benefited from this project. I  
 25 don't think that a benefit needs to be direct and

1 the cost in the most effective and efficient and  
 2 fair manner that they had available to them. NSP  
 3 could not assess a charge to customers that they  
 4 didn't have. They couldn't assess it to the city  
 5 municipal customers. That's just -- those are people  
 6 they don't have access to. So I believe that they  
 7 did what they thought they could in the most fair  
 8 manner.  
 9 MS. CREMER: Those are all the questions I have  
 10 at this time.  
 11 MS. ALTS WIEST: Mr. Gerdes?  
 12 CROSS-EXAMINATION BY MR. GERDES:  
 13 Q. Just one question. Do I understand from what you've  
 14 told us is that you don't believe that the commission  
 15 would have the jurisdiction over the city to require  
 16 the city to pay this?  
 17 A. I don't know that we do.  
 18 MR. GERDES: That's all I have.  
 19 MS. ALTS WIEST: Commissioner?  
 20 EXAMINATION BY COMMISSIONER NELSON:  
 21 Q. You don't know that we don't either. Right?  
 22 A. I don't. I'm not an attorney and I don't profess to  
 23 be one.  
 24 MS. ALTS WIEST: Any other questions from the  
 25 commissioners?

1 EXAMINATION BY MR. RISLOV:

2 Q. What is the depreciable life of the facilities being  
3 added?

4 A. I do not know that answer.

5 Q. So you wouldn't know any tax effect of the  
6 depreciation that the company may charge?

7 A. I didn't look into that. No, I didn't.

8 Q. Do you know if they have put this cost below the line  
9 assuming that it's being paid for by ratepayers?

10 A. The way that NSP has handled this is they've set it  
11 up into its own account where they have separately  
12 segregated the \$108,300. And when they went and put  
13 that \$2.16 surcharge on each person's bill they did  
14 an adjusting entry to zero out that account so there  
15 was nothing in there. They removed that completely.

16 Q. There will be a tax effect of the depreciation that  
17 they're going to assess?

18 A. Yes.

19 Q. And that will offset part of the cost of that  
20 project, won't it?

21 A. Yes, it will.

22 Q. So would you recommend that that be also placed in  
23 that account with the tax benefits forthcoming?

24 A. Without doing any additional analysis I wouldn't  
25 hazard to make a recommendation on that right now.

1 Q. But if they get a tax benefit won't they be  
2 benefiting by at least the amount of the tax that  
3 they're going to be reduced?

4 A. Yes.

5 Q. So it would seem to follow to me that any amount that  
6 they put in, that \$108,000, it would only be fair to  
7 reflect a discount for any tax benefit NSP receives?

8 A. Like I said, I would not hazard to answer that  
9 without doing additional analysis.

10 EXAMINATION BY COMMISSIONER SCHOENFELDER:

11 Q. But the \$2.00 surcharge, or the \$2.04 surcharge,  
12 whatever it was, and you said the account was zeroed  
13 out.

14 A. Yes.

15 Q. So it has been paid. And there won't be additional  
16 charges on people's bills. Is that true?

17 A. There will be no additional charges that I'm aware  
18 of.

19 MS. AILTS WIEST: Any other questions? Any  
20 redirect?

21 MS. CREMER: No, I have nothing further. Thank  
22 you.

23 MS. AILTS WIEST: Do you have any other  
24 witnesses?

25 MS. CREMER: No, I don't.

1 MS. AILTS WIEST: Any rebuttal witnesses?

2 MR. GERDES: No, Your Honor.

3 MS. AILTS WIEST: Do you want to make a closing  
4 statement? I should ask, did any of the parties  
5 want to brief any of this after the hearing?

6 MR. GERDES: I'm sorry, I didn't hear you.

7 MS. AILTS WIEST: Did any of the parties want to  
8 brief any issues raised after the hearing?

9 MR. GERDES: I don't feel compelled to. I did  
10 file a pre-hearing brief, and I don't think our legal  
11 position has changed. I think the facts are  
12 manifest. I guess if staff wants to file one I  
13 probably do, too.

14 MS. CREMER: No, I'm never compelled.

15 MS. AILTS WIEST: Mr. Gerdes, if you have a  
16 closing, it's up to you.

17 MR. GERDES: Mr. Chairman, members of the  
18 commission, very, very briefly. I believe the facts  
19 are manifest. This is something that NSP had to do.  
20 They were ordered to do it by the city commission.  
21 They were placed essentially in the proverbial  
22 junction between a rock and a hard place. I would  
23 submit to you that NSP did the best job it could to  
24 be fair to everybody. This was an expense that had  
25 to be incurred. It would be manifestly unfair to

1 make NSP stockholders pay for it. It would be  
2 manifestly unfair, because of the philosophy of NSP  
3 as a regulating utility, it would be manifestly  
4 unfair to require all of NSP's ratepayers to pay for  
5 improvements in the City of Sioux Falls. As was  
6 indicated, it's questionable whether or not it would  
7 even be accepted in the rate case. And so this was a  
8 bona fide effort on the part of Mr. Wilcox and NSP to  
9 be fair with everybody faced with the prospect that  
10 they had to do what they were asked to do. And for  
11 that reason we would ask that the commission find  
12 that the benefited customers, which is the question  
13 stated in the order for hearing, be as computed by  
14 NSP.

15 MS. AILTS WIEST: Do you have any?

16 MS. CREMER: No, I didn't.

17 MS. AILTS WIEST: Since the commission has  
18 requested additional information they will take this  
19 under advisement and will issue a decision after it  
20 has received information. Do the commissioners have  
21 anything else?

22 CHAIRMAN BURG: Thanks, everybody, for coming.  
23 We really appreciate it. We did come down to try to  
24 get this information out and we appreciate your  
25 information.

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1 COMMISSIONER SCHOENFELDER: Thank you, all.  
 2 CHAIRMAN BURG: That will conclude the hearing.  
 3 (End of Proceeding.)  
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1 STATE OF SOUTH DAKOTA )  
 2 :SS CERTIFICATE  
 3 COUNTY OF MINNEHAHA )  
 4

5 I, Pat L. Beck, Registered Merit Reporter  
 6 and Notary Public within and for the State of South  
 7 Dakota:

8 DO HEREBY CERTIFY that I took the  
 9 proceedings of the foregoing Public Utilities  
 10 Commission Hearing, and the foregoing pages 1-89,  
 11 inclusive, are a true and correct transcript of my  
 12 stenotype notes.

13 I FURTHER CERTIFY that I am not an attorney  
 14 for, nor related to the parties to this action, and  
 15 that I am in no way interested in the outcome of this  
 16 action.

17 In testimony whereof, I have hereto set my hand  
 18 and official seal this 31st day of January, 2000.  
 19  
 20  
 21

22   
 23 Pat L. Beck, Notary Public  
 24 Expiration Date: June 11, 2005  
 25 Iowa CSR Number: 1185

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48







ASAP  
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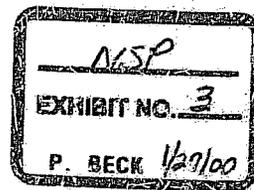
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written statement, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, to the manager prior to the date of any show cause or termination hearing under sections 41-129.2 or 41-129.7.

(b) Nothing in this section shall be interpreted as requiring a hearing prior to any emergency suspension under this section.  
(Ord. No. 57-93, § 1, 7-12-93)

**Sec. 41-129.7. Termination of discharge.**

(a) In addition to the provisions in section 41-122.10, any user who violates the following conditions is subject to discharge termination:

- (1) Violation of wastewater discharge permit conditions;
- (2) Failure to accurately report the wastewater constituents and characteristics of its discharge;
- (3) Failure to report significant changes in operations or wastewater volume, constituents and characteristics prior to discharge;
- (4) Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring or sampling; or
- (5) Violation of the pretreatment standards in section 41-119.

(b) Such user will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under section 41-129.2 why the proposed action should not be taken. Exercise of this option by the manager shall not be a bar to, or a prerequisite for, taking any other action against the user.  
(Ord. No. 57-93, § 1, 7-12-93)

**ARTICLE V. OVERHEAD UTILITY WIRING IN URBAN RENEWAL AREA**

**Sec. 41-130. Area.**

For the purposes of this article, the urban renewal area is inclusive of and bordered by the centerlines of the following streets: Fourth Street

on the north; Minnesota Avenue on the west; 12th Street on the south; and the Milwaukee Railroad Mainline and the Northwestern Railroad at Fifth Avenue on the east.  
(Ord. No. 112-73, § 1, 12-17-73)

**Sec. 41-131. Removal of overhead lines.**

All overhead lines shall be placed underground in the urban renewal area as set forth in section 41-130. The city will coordinate with the affected public and private utility companies a practical year-by-year schedule related to the resurfacing of affected streets and alleys.  
(Ord. No. 112-73, § 1, 12-17-73)

**Sec. 41-132. General policy.**

Inasmuch as the undergrounding of overhead lines in the urban renewal area will require a large capital outlay by the affected utility companies, it is reasonable that those utility companies receive at least a partial contribution for their expenses from the benefited customers and inasmuch as the customers must convert or adapt their utility inlets to receive the new underground service, it is necessary to require them to provide at their own expense such new facilities before overhead service is removed. It is hereby declared that, except as is otherwise provided by this article, such undergrounding and conversions or adaptations required thereby will be implemented and governed by a general written policy prepared by the affected utility company, provided that such a written policy and any amendments thereto be first approved by the city. The written policy, with a resolution attached indicating city approval, will become effective when accepted by the city finance director for filing.  
(Ord. No. 112-73, § 1, 12-17-73)

**Sec. 41-133. Notice.**

At least 90 days prior to construction of any new underground service in the urban renewal area the city will, by registered mail, notify the owners of record of all affected properties of that construction, and that if they desire to continue service or start to receive service from such utility company they must at their own expense make



GENERAL RULES AND REGULATIONS (Continued)

Section No. 6  
 Original Sheet No. 29  
 Relocated from SDPUC No. 1 Sheet No. 5-16

5.5 REPLACEMENT OF OVERHEAD WITH UNDERGROUND

A. General

The Company will replace its overhead facilities with underground facilities upon the request of a customer, a group of customers, or upon lawful order of a municipality. The benefited customers will be charged the value of the undepreciated life of the overhead facilities being removed and removal costs, less salvage, plus the additional cost, if any, incurred by the Company in installing its underground distribution system, including distribution laterals and service laterals, instead of an equivalent overhead system. In addition, payment for each service lateral will be charged in accordance with Section 5.1, STANDARD INSTALLATION. The customer, at his expense, must engage an electrician to convert or adapt his electrical facilities to accept service from the underground facilities to be installed. The Company will not remove its existing overhead service to a customer until after a period of time reasonably adequate for the customer to make the necessary alterations in his electrical facilities to accept underground service.

B. Urban Renewal

In an urban renewal area wherein 75% or more of the buildings in each block are being demolished, and undergrounding of electric lines is required either by the urban renewal plan or by ordinance, the Company will place underground, at its own expense, only that portion of its overhead facilities (excluding distribution and service laterals) that distribute power from main feeder lines to serve new and existing buildings within the renewal area. Main feeder lines or transmission lines that pass through an urban renewal area and serve other areas will be relocated or undergrounded only if the requesting party arranges to pay such costs. Each customer will be charged by the Company for the installation of necessary underground distribution lateral or service lateral to the extent required in the Company's Section 5.1, STANDARD INSTALLATION. The customer, at his expense, must engage an electrician to convert or adapt his electrical facilities to accept service from the underground facilities to be installed. The Company will not remove its existing overhead service to an undemolished building until after a period of time reasonably adequate for the customers to make the necessary alterations in their electrical facilities to accept underground service.

(Continued on Sheet No. 6-30)

Date Filed: 10-15-95

By: Michael J. Hanson  
 General Manager & Chief Executive  
 NSP - South Dakota

Effective Date: 12-16-95

Docket No. EL95-025

Order Date: 12-16-95



Northern States Power Company - South Dakota

Jim Wilcox, Manager,  
Government & Regulatory Services  
500 West Russell Street  
P.O. Box 988  
Sioux Falls, SD 57101-0988  
Telephone (605) 339-8350 fax (612) 573-8083  
email James.C.Wilcox@nspco.com



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**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

February 10, 2000

Mr. William Bullard, Executive Director  
South Dakota Public Utilities Commission  
State Capitol Building  
500 East Capitol Avenue  
Pierre, South Dakota 57501-5070

Dear Mr. Bullard:

Re: EL99-019 In the matter of the one-time special underground assessment by Northern States Power Company in Sioux Falls, South Dakota.

Following is NSP's reply to the follow-up questions raised at the January 27th public hearing:

**Question 1) What is the maintenance cost differential for an overhead distribution system versus an underground distribution system?**

NSP believes that there are more maintenance costs with underground distribution lines than with overhead distribution lines. While overhead lines are susceptible to ice, wind, lightning, and insulator failures, underground lines are vulnerable to rodent damage, accelerated corrosion and periodic excavation damage. Repair of an underground system is more time consuming and thereby typically more expensive. An underground cable that has been "faulted" typically takes a longer and more uncertain length of time to repair. That is, the exact location of the cable has to be ascertained. Neighboring utility underground facilities have to be carefully located and marked. Often sidewalks, driveways, roadways or back yards have to be excavated to find the damaged cable section. The splice itself requires special equipment and training to perform. Finally any excavation damage has to be repaired and returned to it's normal pre-excavation state.

Question 2) What was the cost for each of the seven customers along the north side of 12<sup>th</sup> Street to re-connect to the new underground system?

As it turns out four of these customers - Automatic Transmission Service at 104 W 12<sup>th</sup> Street, Bechtel Insurance at 232 E. 12<sup>th</sup> Street, the First National Bank building at 120 W. 12<sup>th</sup> Street and Associated Consulting Engineers at 110 E. 12<sup>th</sup> Street Street - although they reside along the North side of 12<sup>th</sup> Street - are actually served from taps emanating from locations other than the Cliff Avenue Feeder Number 1 along 12<sup>th</sup> Street that was removed and relocated and placed underground. Spencer Furniture at 118 East 12<sup>th</sup> Street incurred approximately \$2,200 to reconnect to the new underground system. Sid Epstein Liquors at 200 E. 12<sup>th</sup> Street and B & R Inc. of 214 E. 12<sup>th</sup> Street were unable to recall or find records to indicate their expenses needed to reconnect to the new underground system.

Question 3) How are the customers on the south side of 12<sup>th</sup> Street served? Did any of them also have to re-connect to this new underground feeder?

None of the customers on the South side of 12<sup>th</sup> Street were connected to the section of overhead distribution feeder line that was removed and replaced with an underground facility. There are approximately seven buildings on the South side of 12<sup>th</sup> street in the three block area of concern. These buildings include three apartment buildings, the U.S. Federal Courthouse building, a couple of houses and a chiropractic building. The south side of the 200 block of East 12<sup>th</sup> Street is fed from a tap distribution line that emanates from the Cliff Avenue Feeder Number 1 before it arrives at 12<sup>th</sup> Street. The south side of the 100 blocks of East and West 12<sup>th</sup> Street are fed from the south - a tap distribution line that emanates from the NSP Sioux Falls Substation Feeder Number 61.

Question 4) What is the number of electrical customers in Sioux Falls served by the City Municipal, Sioux Valley Southwestern Coop and what has recently been renamed Southeastern Electric Coop?

On Oct 25, 1999 NSP served 53,036 customers within the city of Sioux Falls. The City of Sioux Falls reported in their 1998 annual electrical report that they serve 2,049 customers in Sioux Falls. Southeastern Electric Coop reported that that they serve about 1,200 customers within the City of Sioux Falls. Sioux Valley Southwestern declined to report as they believe these data are confidential and proprietary.

NSP's estimate of the total number of electric customers residing in Sioux Falls is about 57,000 customers. That is, NSP serves about 93% of the electrical customers in Sioux Falls. If NSP had access to all of these customers, the total bill to each of the 57,000 customers, including tax, would have been about \$2.01.

Question 5) What is the location, length and type of other NSP overhead distribution feeder lines and lateral lines within the Sioux Falls Urban Renewal area?

There are approximately 6 blocks of remaining overhead distribution power line segments within the Sioux Falls Urban Renewal area. The three maps attached to this letter graphically depict the five distribution power line sections that comprise those remaining line segments. The descriptions following correspond to the hand labeled numbers on the maps.

- 1) This overhead line segment is a 3-phase, 4,160 Volt main feeder line running for about 2 blocks north and south mid block between Phillips & Main Avenues and between 10<sup>th</sup> & 12<sup>th</sup> Street in downtown Sioux Falls. The source for this line segment emanates from NSP's Cliff Avenue Substation Feeder Number 1. This overhead line section connects at the south end to the new underground feeder section running along 12<sup>th</sup> Street. On the north end this overhead line section connects through a normally open switch to an underground section of the NSP Weber sub-feeder Number 1. (Note - the red lines on the map with the three "cross-hatches" depict an underground line section. The red lines on the map with three "dots or dashes" interspersed within the line depict an overhead line section.)
- 2) This overhead line segment is a 3-phase, 13,800 Volt lateral line between the YMCA and YWCA in downtown Sioux Falls. The source for this line segment emanates from NSP's Sioux Falls Substation Feeder Number 61. This overhead line section extends approximately ½ block from mid block in the block bounded by 10<sup>th</sup> & 11<sup>th</sup> Streets and Minnesota & Dakota Avenues to a point on the south side of 11<sup>th</sup> Street mid block between Minnesota & Dakota Avenues.
- 3) This overhead line segment is a 3-phase, 4,160 Volt lateral line running about 2 ½ blocks mid block between Minnesota & Dakota Avenues and from mid block between 9<sup>th</sup> & 8<sup>th</sup> Streets (near Kindler Pontiac) north to 6<sup>th</sup> Street (just south of the County Courthouse.) The source for this line segment emanates from NSP's Weber Substation "tap" Number 1.
- 4) This overhead line segment is a 3-phase, 13,800 Volt lateral line section running about ½ block across 6<sup>th</sup> Street - from near the Old Courthouse Museum to a point mid block near KSFY TV in downtown Sioux Falls. That is, from a point on the north side of 6<sup>th</sup> Street mid block between Main and Dakota Avenues to a point mid block in the block bounded by 6<sup>th</sup> & 7<sup>th</sup> Streets and Main and Dakota Avenues. The source for this line segment emanates from NSP's Sioux Falls Substation Feeder Number 51.
- 5) This overhead line segment is a 3-phase, 4,160 Volt main feeder line running for about ½ block north of 12<sup>th</sup> Street mid block between First & Second Avenues in downtown Sioux Falls. The source for this line segment emanates from NSP's Cliff

Avenue Substation Feeder Number 1. This overhead line section connects to the east end of the new underground feeder section running along 12<sup>th</sup> Street.

Question 6 - added following the Hearing) How does NSP plan to account for the revenue from this surcharge?

For book purposes, NSP has credited the project account with the revenues received. That credit has "zeroed" NSP's capital asset account leaving NSP with no change in booked asset valuation.

For tax purposes, NSP has reviewed IRS Notice 87-82, 1987-2 CB 389, IRC Sec(s). 118 regarding Regulated Public Utilities - Contributions in Aid of Construction After Tax Reform, Section II Relocation of Utility Facilities, subparagraph House Report at 644-45. That section provides that if the relocation of the utility facilities were for the benefit of the public as a whole, then the revenues are not to be treated as a taxable contribution in aid of construction and that NSP's tax treatment of these revenues should follow our book accounting practice leaving no depreciable asset for tax purposes.

If anyone has any questions, please call me at 339-8350

Sincerely,



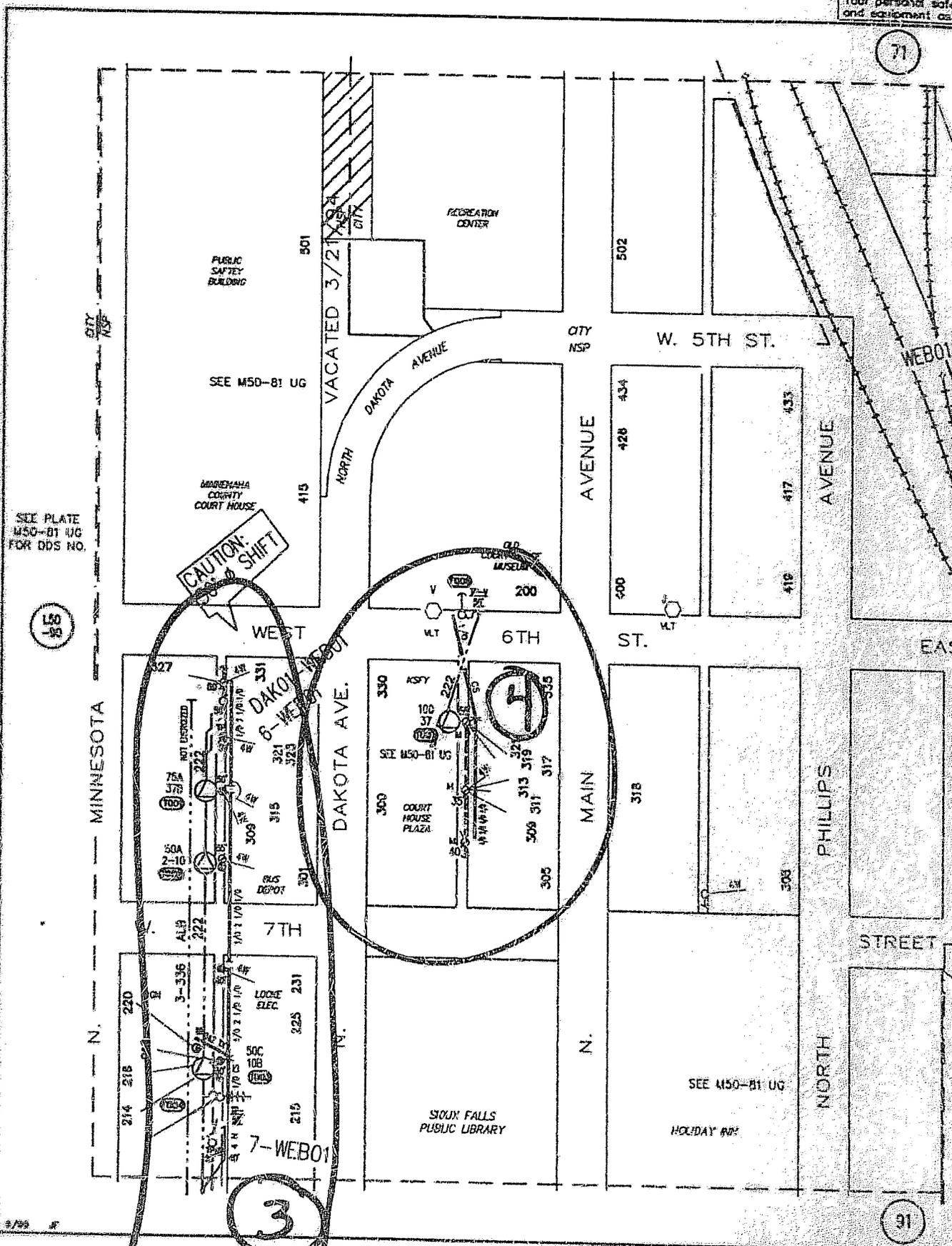
Jim Wilcox

c. Kent Larson



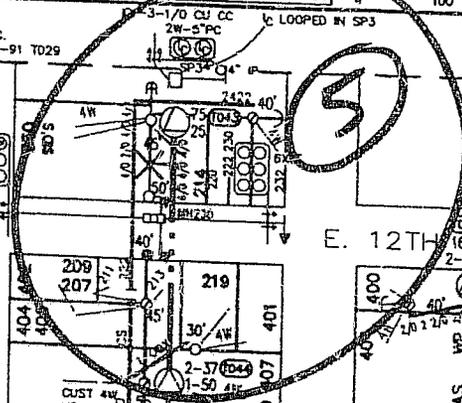
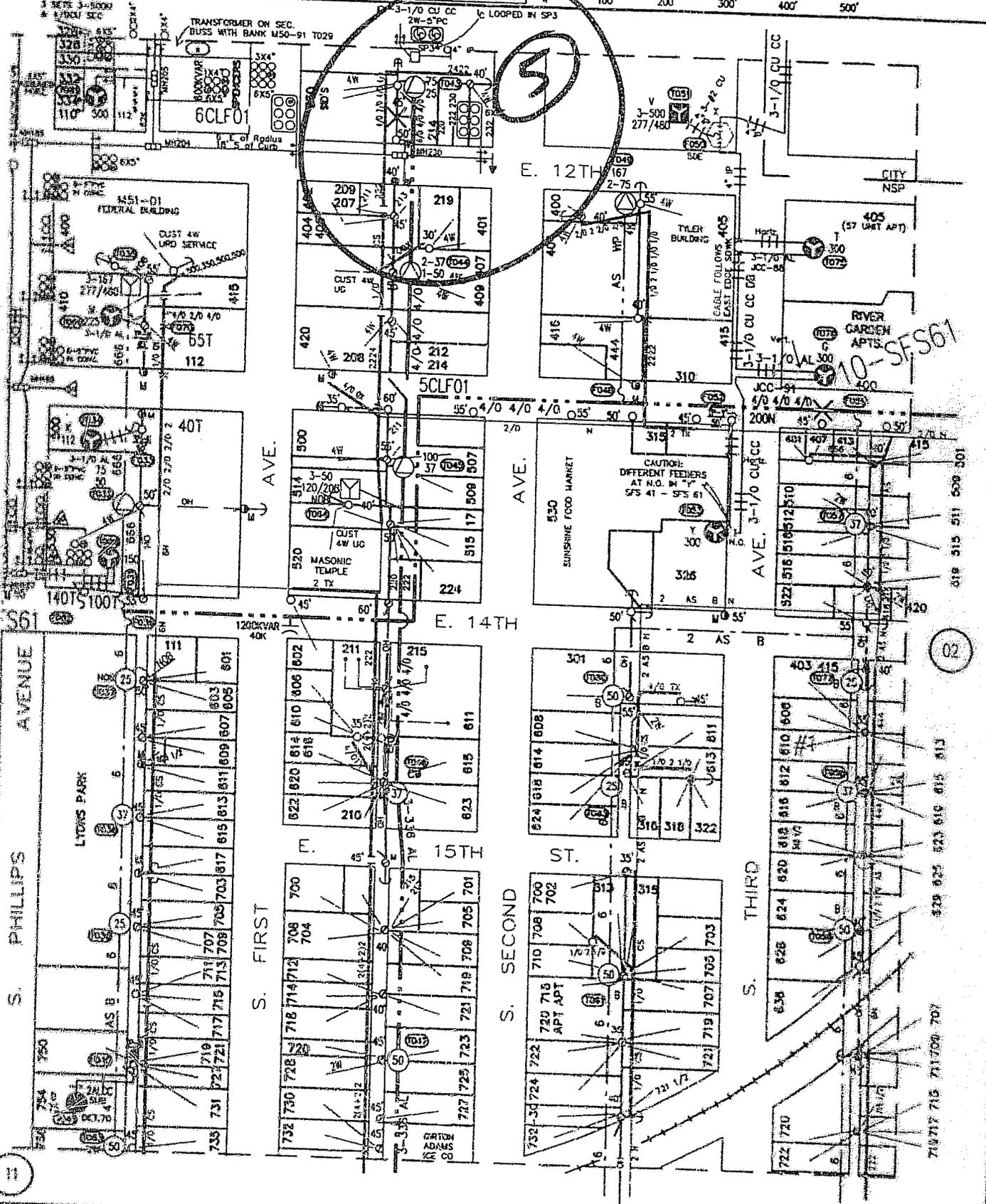
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This map is a tool to assist employees in the performance of their work. Your personal safety is provided for by using safety practices, procedures and equipment as described in safety training programs, manuals and SPAR'S.

SCALE 1" = 100'



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02

LAW OFFICES  
MAY, ADAM, GERDES & THOMPSON LLP  
503 SOUTH PIERRE STREET  
P. O. BOX 160  
PIERRE, SOUTH DAKOTA 57501-0160

GLENN W. MARTENS 1881-1963  
KARL GOLDSMITH 1885-1966  
THOMAS C. ADAM  
DAVID A. GERDES  
CHARLES M. THOMPSON  
ROBERT S. ANDERSON  
BRENT A. WILBUR  
TIMOTHY M. ENGEL  
MICHAEL F. SHAW  
NEIL FULTON

OF COUNSEL  
WARREN W. MAY

February 17, 2000

TELEPHONE  
605 224-6603  
TELECOPIER  
605 224-8289  
FAX  
deg@magt.com

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Mr. William Bullard, Jr.  
Executive Director  
Public Utilities Commission  
State Capitol  
500 East Capitol Avenue  
Pierre, South Dakota

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

57501-5070

RE: NSP ONE-TIME SPECIAL UNDERGROUND ASSESSMENT  
Docket No: EL99-019  
Our file: 0185

Dear Bill:

I am submitting an original and ten copies of this letter and the enclosure. I recognize that following the hearing we indicated that NSP would not be filing a post hearing brief. However, legal authority has come to our attention which we believe is material to the Commission's decision. Thus, we would ask the Commission to accept this filing under the rules for post hearing submissions.

Accompanying this letter is a copy of Northern States Power Company vs. City of Oakdale, 588 NW2d 534 (Minn. App., 1999). While the Oakdale case is procedurally different from the case now before the Commission, it reaches the result advocated by NSP in this docket.

The Minnesota Court of Appeals concluded that NSP's tariff carried the force of state law. However, that tariff required the City of Oakdale to pay the cost of undergrounding, which conflicted with another provision of state law embodied in Oakdale's statutory authority to set conditions for undergrounding. The court concluded that the conflict must be resolved in favor of the City of Oakdale having the more specific authority. However, the court also pointed out at page 543 of the decision that another portion of NSP's tariff permitted the cost of undergrounding to be recovered from ". . . the ratepayers benefitting from the service."

This of course is the position taken by NSP in this docket.

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Mr. William Bullard, Jr.  
February 17, 2000  
Page 2

While the existence of the Oakdale case was known to us prior to the hearing, there was a misunderstanding and we did not understand it to be a reported decision. Since it does in fact involve a reported decision, we thought that the Commission should have the case available for its consideration.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY 

DAG:mw

Enclosures

cc/enc: Jim Wilcox

**NORTHERN STATES POWER  
COMPANY, Appellant,**

v.

**CITY OF OAKDALE, Respondent.**

No. C2-98-867.

Court of Appeals of Minnesota.

Feb. 2, 1999.

Electric utility brought declaratory judgment action seeking determination that city ordinance requiring all new electric distribution lines to be placed underground was invalid and seeking to enjoin enforcement of ordinance in connection with project along state highway. After city amended ordinance to exclude state highways, city moved to dismiss action as moot and utility filed cross-motion for summary judgment. The District Court, Washington County, Susan R. Miles, J., granted summary judgment on the merits in favor of city, and utility appealed. The Court of Appeals, Harvey A. Holtan, J., sitting by appointment, held that: (1) manner in which utility's rate tariffs were filed with Public Utilities Commission (PUC) was not procedurally inadequate and therefore did not prevent tariffs from attaining status of general state law; (2) ordinance was reasonably related to city's interest in protecting the public safety; and (3) ordinance was neither preempted by nor in conflict with state law.

Affirmed as modified.

Halbrooks, J., filed an opinion concurring in part and dissenting in part.

**1. Appeal and Error ⇨863**

On appeal from summary judgment, a reviewing court determines whether any genuine issues of material fact exist and whether the district court erred in applying the law.

**2. Appeal and Error ⇨863**

On appeal from summary judgment, no deference need be given to the district court's application of the law.

**3. Appeal and Error ⇨893(1)**

Statutory interpretation presents a question of law that an appellate court reviews de novo.

**4. Electricity ⇨11.3(1)**

Manner in which electric utility's rate tariffs were filed with Public Utilities Commission (PUC) was not procedurally inadequate and therefore did not prevent tariffs from attaining status of general state law; tariffs were filed with PUC and were reviewed and approved through a series of ratemaking proceedings. M.S.A. §§ 216E.05, subd. 1, 216E.09, subd. 3.

**5. Public Utilities ⇨120**

Ratemaking by Public Utilities Commission (PUC) is a quasi-legislative function.

**6. Public Utilities ⇨194**

Public Utilities Commission's (PUC) decisions command the same regard and are subject to the same tests as enactments of the legislature.

**7. Electricity ⇨11.3(1)**

Electric utility's tariff for determining appropriate distribution line installation was not an improper delegation of authority from Public Utilities Commission (PUC) to utility. M.S.A. § 216E.15, subd. 6.

**8. Public Utilities ⇨194**

When the Public Utilities Commission (PUC) acts in a legislative capacity as in rate increase allocations, balancing both cost and noncost factors and making choices among public policy alternatives, its decision will be upheld unless shown to be in excess of statutory authority or resulting in unjust, unreasonable, or discriminatory rates by clear and convincing evidence.

**9. Municipal Corporations ⇨57, 59**

Municipalities have no inherent powers and possess only such powers as are expressly conferred by statute or necessarily implied therefrom.

**10. Electricity ⇨5(1)**

City ordinance requiring that new electric distribution lines be placed underground was authorized by statute governing municipi-

**NORTHERN STATES POWER CO. v. CITY OF OAKDALE Minn. 535**

*Cite as 588 N.W.2d 534 (Minn.App. 1999)*

pal regulatory and taxing powers with respect to public utilities. M.S.A. § 216B.36.

**11. Municipal Corporations ⇨592(1)**

Statute governing municipal regulatory and taxing powers with respect to public utilities confers upon municipalities the power to require electric distribution line undergrounding either through a franchise or through reasonable exercise of its police powers. M.S.A. § 216B.36.

**12. Public Utilities ⇨113**

Statute governing municipal regulatory and taxing powers with respect to public utilities allows for a revenue-generating fee from a franchise and a separate fee for a permit to defray administrative costs. M.S.A. § 216B.36.

**13. Municipal Corporations ⇨594(1)**

City ordinance requiring that new electric distribution lines be placed underground was reasonably related to city's interest in protecting the public safety from hazards presented by overhead electric power lines. M.S.A. § 216B.36.

**14. Municipal Corporations ⇨122.1(2)**

Municipal ordinance is presumed constitutional; the burden is on the party attacking the ordinance's validity to prove an ordinance is unreasonable or that the requisite public interest is not involved, and consequently that the ordinance does not come within the police power of the city.

**15. Municipal Corporations ⇨594(1)**

To prove a municipal ordinance is unreasonable, a complaining party must show that it has no substantial relationship to the public health, safety, morals, or general welfare.

**16. Municipal Corporations ⇨111(3)**

If the reasonableness of a municipal ordinance is debatable, the courts will not interfere with the legislative discretion.

**17. Electricity ⇨9(1)**

Legislature's specific grant of authority to municipalities to require utility line undergrounding prevailed over general grant of authority to Public Utilities Commission (PUC) to regulate services; therefore, to the extent that electric utility's tariff conflicted

with city's ordinance requiring that new electric distribution lines be placed underground, tariff was required to yield. M.S.A. § 645.26, subd. 1.

**18. Municipal Corporations ⇨592(1)**

When the legislature specifically grants authority to municipalities, the exercise of that authority cannot logically be seen to conflict with state law.

**19. Public Utilities ⇨119.1**

City may regulate a utility without compensation in valid exercise of its police power.

**20. Eminent Domain ⇨2(1.1)**

City's uncompensated regulation of electric utility, pursuant to ordinance requiring that new electric distribution lines be placed underground, did not perpetrate an unconstitutional taking; regulation was designed to prevent public harm, such that no taking occurred, and utility was able to request that Public Utilities Commission (PUC) allocate additional costs of undergrounding to appropriate group of ratepayers. U.S.C.A. Const. Amend. 5.

**21. Electricity ⇨11.2(1)**

Duty to avoid rate discrimination is electric utility's duty. M.S.A. §§ 216B.05, 216B.07.

*Syllabus by the Court*

1. The manner in which NSP's rate tariffs at issue were filed with the Minnesota Public Utilities Commission was not procedurally inadequate and therefore did not prevent the tariffs from attaining the status of general state law.

2. An ordinance adopted by a municipality requiring that new electric distribution lines be placed underground is authorized by Minn.Stat. § 216B.36 (1998), and is reasonably related to the municipality's interest in protecting the public safety.

3. The municipality's ordinance at issue is neither preempted by nor in conflict with state law.

George O. Ludcke, Kelly & Berens, P.A., Minneapolis, MN; and Harold J. Bagley, Senior Attorney, Law Department, Northern States Power Company, Minneapolis, MN (for appellant).

James M. Strommen, Daniel J. Green-sweig, Kennedy & Graven, Chtd., Minne-apolis, MN (for respondent).

Michael A. Hatch, Attorney General, Me-gan J. Hertzler, Dennis D. Ahlers, Assistant Attorneys General, St. Paul, MN (for amicus curiae Minnesota Public Utilities Commis-sion).

Christopher D. Anderson, Minnesota Pow-er, Inc., Duluth, MN (for amicus curiae Minnesota Power, Inc.).

Harold LeVander, Jr., Maun & Simon, PLC, St. Paul, MN (for amicus curiae Rural Electric Association).

Carla J. Heyl, League of Minnesota Cities, St. Paul, MN (for amicus curiae League of Minnesota Cities).

Considered and decided by HALBROOKS, Presiding Judge, ANDERSON, Judge, and HOLTAN, Judge.

### O P I N I O N

HARVEY A. HOLTAN, \* Judge.

Northern States Power Company (NSP) appeals from the district court's grant of summary judgment in favor of the City of Oakdale (the city) in a case involving an ordinance requiring underground electric distribution lines. We affirm.

### FACTS

In the spring of 1997, Imation Corporation requested that NSP provide additional ser-vices to its facility located in the City of Oakdale. NSP subsequently informed the city of its intent to construct new overhead electric distribution lines along state high-ways 5 and 120. NSP's General Rules and Regulations (tariff) § 5.1A provides that "[t]he Company reserves the right to desig-nate the type of facilities to be installed either overhead or underground." The city

requested that the lines be installed under-ground. NSP's tariff § 5.3A provides in rel-evant part:

When requested by the customer, group of customers, developer, or municipality to provide types of service that result in an expenditure in excess of the Company des-ignated service installation as provided un-der Section 5.1, STANDARD INSTALLA-TION, the requesting \* \* \* municipality will be responsible for such excess expen-diture.

NSP agreed to construct the new lines un-derground if the city would agree to pay the additional costs associated with underground-ing. NSP estimated that undergrounding would cost an additional \$338,000, over and above the \$190,000 cost of overhead construc-tion.

In July 1997, the city passed an ordinance requiring that any installation of electric dis-tribution systems of less than 15,000 volts be placed underground. Oakdale, Minn. Code of Ordinances §§ 23-40 and 23-41 (July 1997).

NSP was then granted a permit from MnDOT authorizing completion of the pro-ject using overhead lines. NSP informed the city that it was not required to obtain a permit from the city because MnDOT had exclusive authority over state trunk highway right-of-ways under Minn.Stat. § 161.45 (1998). NSP offered to amend its franchise with the city so that the additional costs of undergrounding could be paid through a franchise fee collected from NSP ratepayers in the city. The city declined the offer.

NSP began construction of the overhead lines. On the first day of construction, the Oakdale Police Department notified the NSP crew that the construction was in violation of the ordinance, and crew members would be arrested if they did not cease construction. NSP then brought this action seeking a de-claratory judgment that the ordinance was invalid and seeking to enjoin enforcement of the ordinance.

The city subsequently agreed to allow NSP to go forward with the overhead construc-

\* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by ap-

pointment pursuant to Minn. Const. art. VI, § 10

tion. The city later amended the ordinance to exclude state trunk highways from the undergrounding requirement. Oakdale, Minn.Code of Ordinances § 23-41 (October 1997). The city then brought a motion to dismiss NSP's complaint for mootness. NSP brought a cross motion for summary judgment on the validity of the ordinance. NSP included with its motion an affidavit detailing future projects in the city that would be affected by the ordinance. One of the projects was scheduled to begin in January 1998, and included 1.2 miles of power line within the city.

Following a hearing, the district court denied the city's motion to dismiss for mootness, denied NSP's motion for summary judgment, and granted summary judgment on the merits in favor of the city. The court concluded that NSP's commission-approved tariffs did not attain the status of general state law, that the ordinance was not preempted by or in conflict with the Minnesota Public Utilities Act (MPUA), Minn.Stat. ch. 216B (1998), and that the ordinance was a valid exercise of the city's power. The court denied injunctive relief accordingly, and the remaining portions of NSP's complaint were dismissed with NSP's assent.

NSP appeals the district court's grant of summary judgment. It alleges that the district court erred in concluding that NSP's tariffs, filed with the Minnesota Public Utilities Commission (the commission), did not assume the status of general state law. It further alleges that the court erred by concluding that the city's ordinance was valid and not in conflict with or preempted by the MPUA and its approved tariffs.

#### ISSUES

I. Did the district court err in determining that the filed tariffs did not assume the status of general state law?

II. Did the district court err in determining that the ordinance was valid, and not preempted by or in conflict with state law?

#### ANALYSIS

[1-3] On appeal from summary judgment, a reviewing court determines whether

any genuine issues of material fact exist and whether the district court erred in applying the law. *Warnick v. Moss & Barnett*, 490 N.W.2d 108, 112 (Minn.1992). In making its determinations, "the court must view the evidence in the light most favorable to the nonmoving party." *State by Beaulieu v. City of Mounds View*, 518 N.W.2d 567, 571 (Minn. 1994). No deference need be given to the district court's application of the law. *Frost-Benco Elec. Ass'n v. Minnesota Pub. Utils. Comm'n*, 358 N.W.2d 639, 642 (Minn.1984). Statutory interpretation presents a question of law that an appellate court reviews de novo. *Hibbing Educ. Ass'n v. Public Employment Relations Bd.*, 369 N.W.2d 527, 529 (Minn.1985).

#### I.

[4] NSP argues that the district court erred when it determined that the commission-approved tariffs failed to attain the status of general state law due to procedural deficiencies. We agree.

[5, 6] The commission has been granted legislative authority to regulate public utilities and determine whether their rates are reasonable. *See* Minn.Stat. ch. 216B (1998). Ratemaking is a quasi-legislative function. *Peoples Natural Gas Co. v. Minnesota Pub. Utils. Comm'n*, 369 N.W.2d 530, 533 (Minn. 1985). Utilities are required to file schedules with the commission "showing all rates, tolls, tariffs and charges which it has established \* \* \*." Minn.Stat. § 216B.05, subd. 1 (1998). Filings made with the commission by utilities "continue in force until amended by the public utility or until changed by the commission \* \* \*." Minn.Stat. § 216B.09, subd. 3 (1998). The commission's decisions "command the same regard and are subject to the same tests as enactments of the legislature." *Minneapolis St. Ry. Co. v. City of Minneapolis*, 251 Minn. 43, 71, 86 N.W.2d 657, 676 (1957) (citation omitted).

The district court concluded that: NSP Rules 5.1 and 5.3 never assumed the status of general state law because they were not adopted pursuant to any agency rulemaking proceeding. Their purpose was limited to advising the MPUC of the manner in which this utility would treat all

of its customers. To file these "rules" without benefit of the protections of notice and opportunity for hearing and then claim they have the force and effect of general state law is vastly overstating the purpose and intent of these tariffs.

This court has previously held a filed tariff to be "an inherent part of the lawful rate charged to consumers \* \* \*." *Computer Tool & Eng'g, Inc. v. Northern States Power Co.*, 453 N.W.2d 569, 573 (Minn.App.1990) (holding NSP tariff § 1.4 valid and enforceable), *review denied* (Minn. May 23, 1990). The *Computer Tool* court concluded that the tariff had been "recognized as a reasonable limitation of liability by the agency exclusively empowered by the legislature to make this determination," based upon the tariff's survival through several contested rate changes. *Id.* The same analysis applies here. The tariffs at issue here were originally filed with the commission in 1984. Since that time they have been reviewed and approved through a series of commission ratemaking proceedings, most recently in 1992. See MUPC Docket No. E-002/GR-92-1185 (1992). As approved by the commission, the tariffs at issue are not invalid as the product of a procedural defect.

[7,8] The city asserts that even if the tariffs are not procedurally invalid, tariff section 5.1 represents an improper delegation of authority from the commission to NSP. The city cites *Northern Pac. Ry. Co. v. State of Minn. ex rel. Duluth*, 208 U.S. 583, 597, 28 S.Ct. 241, 345-46, 52 L.Ed. 630 (1908), for the proposition that the commission could not delegate the authority to determine placement of utility lines to NSP, a private interest. However, *Northern Pac. Ry.* merely states that attempts to contract away police powers through utility franchises are void as against public policy. *Id.* The case does not deal with decisions by a regulatory agency.

When the [commission] acts in a legislative capacity as in rate increase allocations, balancing both cost and noncost factors and making choices among public policy alternatives, its decision will be upheld unless shown to be in excess of statutory

authority or resulting in unjust, unreasonable, or discriminatory rates by clear and convincing evidence.

*In re Request of Interstate Power Co.*, 559 N.W.2d 130, 133 (Minn.App.1997) (quoting *Hibbing Taconite Co. v. Minnesota Pub. Serv. Comm'n.*, 302 N.W.2d 5, 9 (Minn.1980)).

Here, the commission could have reasonably concluded that NSP would be in the best position to determine what type of installation would be most feasible and cost-effective in order to provide adequate, efficient, and reasonable service at reasonable rates. Minn.Stat. § 216B.16, subd. 6 (1995). Given the deference to be accorded the commission decision, its delegation of authority to NSP was not unreasonable.

## II

NSP asserts that the city did not have legal authority to enact the ordinance in question. NSP further argues that the ordinance is in conflict with and preempted by the MPUA and commission-approved tariffs. We disagree.

[9] "[Municipalities have no inherent powers and possess only such powers as are expressly conferred by statute \* \* \* or necessarily implied therefrom. *Northern States Power Co. v. City of Granite Falls*, 463 N.W.2d 541, 543 (Minn.App.1990), *review denied* (Minn. Jan. 14 & 24, 1991); see also *Minneapolis St. Ry. Co. v. City of Minneapolis*, 229 Minn. 502, 507, 40 N.W.2d 353, 357 (1949) (examining powers possessed by city).

[10] Minn.Stat. § 216B.35 (1995) governs municipal regulatory and taxing powers with respect to public utilities and provides in relevant part:

Any public utility furnishing the utility services enumerated in section 216B.02 or occupying streets, highways, or other public property within a municipality may be required to obtain a license, permit, right or franchise in accordance with the terms, conditions, and limitations of regulatory acts of the municipality, including the placing of distribution lines and facilities underground. \* \* \* All existing licenses,

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permits, franchises and other rights acquired by any public utility or municipality prior to April 11, 1974, including the payment of existing franchise fees, shall not be impaired or affected in any respect by the passage of this chapter, except with respect to matters of rate and service regulation \* \* \*.

Minn.Stat. § 222.37 (1998) also deals with municipal regulation of utility line placement and provides in part:

Any \* \* \* power company \* \* \* may use public roads for the purpose of constructing, using, operating, and maintaining lines \* \* \* for their business, but such lines shall be so located as in no way to interfere with the safety and convenience of ordinary travel along or over the same; and, in the construction and maintenance of such line, \* \* \* the company shall be subject to all reasonable regulations imposed by the governing body of any county, town or city in which such public road may be.

NSP contends that the language in Minn. Stat. § 216B.36 about placing distribution lines underground refers only to a municipality's ability to grant a franchise, essentially a contract, requiring undergrounding. See *City of S. St. Paul v. Northern States Power Co.*, 189 Minn. 26, 29, 248 N.W. 288, 290 (1933) (interpreting an ambiguous term in a franchise under contract law). Historically, cities have regulated utilities both by agreement and through exercise of police power. See *Minneapolis St. Ry. Co. v. City of Minneapolis*, 189 F. 445, 452 (D.Minn.1911) (holding that franchise does not limit the city's ability to "regulate and control the manner of carrying on the business of the road, the laying of the tracks, the use of the streets, and the keeping of the equipment"); *Minneapolis St. Ry. Co. v. City of Minneapolis*, 229 Minn. at 512-513, 40 N.W.2d at 360-61 (holding that the power to license, a police power, is separate and not impaired by the franchise, but is subject to the judicially enforceable standard of reasonableness); *Borough of Belle Plaine v. Northern Power Co.*, 142 Minn. 361, 364, 172 N.W. 217, 219 (1919) (holding that municipal regulation of utility may be either unilateral or bilateral);

see also *City of Roswell v. Mountain States Tel. & Tel. Co.*, 78 F.2d 379, 384 (10th Cir. 1935) (distinguishing franchises from the exercise of police power over use of streets and alleys which is generally accomplished through ordinances and resolutions). Thus, the first question to be addressed is whether Minn.Stat. § 216B.36 confers the authority to require undergrounding as a police power or merely a franchise power.

[11] The authority of a municipality to require underground placement of utility lines has long been considered a police power. See, e.g., *Northwestern Tel. Exch. Co. v. City of Minneapolis*, 81 Minn. 140, 149-50, 83 N.W. 527, 531 (1900). The *Northwestern Tel.* court stated that

it is not to be doubted that the city council has the plenary power to extend the sub-surface district wherever, in the exercise of a fair discretion, it decides that public interests require it to be done.

*Id.* In addition, Minn.Stat. § 222.37 specifically subjects utilities to a municipality's reasonable regulation with respect to placement of lines in the right-of-way. Furthermore, the plain language of Minn.Stat. § 216B.36 provides that a utility "may be required to obtain a license, permit, right or franchise \* \* \*." See *Minneapolis St. Ry.*, 229 Minn. at 512-13, 40 N.W.2d at 360 (construing the power to license as a police power that could not be abdicated through a franchise). If the legislature had intended to limit a municipality's regulation of utilities to that which could be accomplished by franchise, the additional terms license, permit and right would have been unnecessary and meaningless. However, when construing a statute we endeavor to give all provisions meaning. Minn.Stat. § 645.16 (1998). We therefore conclude that Minn.Stat. § 216B.36 confers upon municipalities the power to require electric distribution line undergrounding either through a franchise or through reasonable exercise of its police powers.

We further note that several jurisdictions have recognized local power to regulate utility line placement despite statewide regulation through a PUC. See *U.S. West Communications, Inc. v. City of Longmont*, 948 P.2d 509, 520 (Colo.1997) (upholding municipal or-

dinance requiring utility to relocate its lines underground); *City and County of Denver v. Mountain States Tel. & Tel. Co.*, 754 P.2d 1172, 1176 (Colo.1988) (requiring utility to relocate its lines due to the construction of new sewer lines); *City of Geneseo v. Illinois N. Utils. Co.*, 378 Ill. 506, 510, 39 N.E.2d 26, 30 (Ill.1941) (requiring utility with expired franchise to remove its inoperational power lines); *Detroit Edison Co. v. Southeastern Michigan Transp. Auth.*, 161 Mich.App. 28, 410 N.W.2d 295, 297 (Mich.Ct.App.1987) (requiring utility to relocate its facilities within the projected route of "people mover" upon order of the transportation authority); *Northwest Natural Gas v. City of Portland*, 300 Or. 291, 711 P.2d 119, 121 (Or.1985) (requiring utility to relocate its lines to accommodate construction of a light rail transit system); *Vermont Gas Sys., Inc. v. City of Burlington*, 153 Vt. 210, 571 A.2d 45, 49 (Vt.1989) (requiring gas utility to relocate its lines due to the construction of new storm and sewer lines); *City of Edmonds v. General Tel. Co.*, 21 Wash.App. 218, 584 P.2d 458, 461 (Wash.Ct.App.1978) (upholding municipal regulation requiring utility to place its lines underground at its own expense); but see *Union Elec. Co. v. City of Crestwood*, 499 S.W.2d 480, 483 (Mo.1973) (holding that municipal ordinance requiring undergrounding exceeded its authority and was invalid; regulatory power had been vested in the Public Service Commission); *Public Serv. Co. v. Town of Hampton*, 120 N.H. 68, 411 A.2d 164, 166 (N.H.1980) (municipal power over transmission lines preempted by statute placing those powers in regulatory agency) (emphasis added); *In re Public Serv. Elec. & Gas Co.*, 35 N.J. 358, 173 A.2d 233, 239 (N.J.1961) (holding that ordinance requiring undergrounding of electric transmission lines was invalid as outside the scope of municipal power) (emphasis added); *Cleveland Elec. Illum. Co. v. City of Painesville*, 10 Ohio App.2d 85, 226 N.E.2d 145, 148 (Ohio

1. Rate is defined as every compensation, charge, fare, toll, tariff, rental and classification, or any of them, demanded, observed, charged, or collected by any public utility for any service and any rules, practices, or contracts affecting any such compensation, charge, fare, toll, rental, tariff, or classification.

Ct.App.1967) (holding construction of public utility facilities cannot be prohibited or unreasonably regulated by municipality where such facilities are constructed in accord with safety standards and meet the standards of the hot wires statute); *Duquesne Light Co. v. Upper St. Clair Township*, 377 Pa. 323, 329, 105 A.2d 287, 290 (1954) (holding utility was not subject to township regulation regarding location and construction of transmission lines) (emphasis added); *Vandehel Developers v. Public Serv. Comm'n.* 790 P.2d 1282, 1288 (Wyo.1990) (holding Public Service Commission order controlled over conflicting order of county board; county did not have power to regulate utilities).

NSP argues that we should focus on the provision of Minn.Stat. § 216B.36 that provides:

All existing licenses, permits, franchises and other rights acquired by any public utility or municipality prior to April 11, 1974, including the payment of existing franchise fees, shall not be impaired or affected in any respect by the passage of this chapter, except with respect to matters of rate and service regulation \* \* \* that are vested in the jurisdiction of the commission by this chapter. \* \* \*

(Emphasis added.) However,

[w]hen a general provision in a law is in conflict with a special provision in the same or another law, the two shall be construed, if possible, so that effect may be given to both. If the conflict between the two provisions be irreconcilable, the special provision shall prevail and shall be construed as an exception to the general provision \* \* \*

Minn.Stat. § 645.25, subd. 1 (1998); see also *Itasca County Bd. Of Comm'rs v. Olson*, 372 N.W.2d 804, 807 (Minn.App.1985) (where possible, a court must give effect to all related statutory provisions). Here the legisla-

Minn.Stat. § 216B.02, subd. 5 (1998). Service is defined as natural, manufactured or mixed gas and electricity; the installation, removal, or repair of equipment or facilities for delivering or measuring such gas and electricity.

Minn.Stat. § 216B.02, subd. 6 (1998).

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are specifically granted municipalities the power to require utility distribution line undergrounding. Moreover, the provision relied upon by NSP clearly only applies to "existing licenses, permits, franchises and other rights" \* \* \* acquired prior to April 11, 1974." Minn.Stat. § 216B.36. By the plain language of the statute, the legislature reserved the authority of municipalities to require distribution line undergrounding.

Finally, NSP argues that if Minn.Stat. § 216B.36 grants police powers, then it would be granting a police power to collect fees through licenses and permits—effectively an excise tax. If so, the provision regarding the collection of an excise tax near the end of the statute would be meaningless. Further, it would conflict with the general principle that a city's police powers do not include the power to raise revenue. See *Country Joe, Inc. v. City of Eagan*, 560 N.W.2d 681, 686-87 (Minn.1997) (holding that when a city's real motive is to generate revenue, rather than recouping the administrative costs of regulation, the fee is an illegal tax).

[12] NSP's argument here assumes that the statute cannot be read to reserve both franchise power and some police powers. The portion of the statute involving collection of fees states:

Under the license, permit, right, or franchise, the utility may be obligated by any municipality to pay to the municipality fees to raise revenue or defray increased municipal costs accruing as a result of utility operations, or both.

Minn.Stat. § 216B.36. Clearly, the statute can be read to allow for a revenue-generating fee from a franchise and a separate fee for a permit to defray administrative costs. See Minn.Stat. § 645.17(1) (1998) (stating that statutes are to be interpreted with the presumption that the legislature does not intend a result that is unreasonable).

[13] Having determined that Minn.Stat. § 216B.36 provides the city with the statutory authority to require utility line undergrounding, our inquiry as to the validity of the ordinance is not yet complete. NSP contends that the ordinance is not reasonably

related to a legitimate objective. We disagree.

[14-16] A municipal ordinance is presumed constitutional; the burden is on the party attacking the ordinance's validity to prove an ordinance is unreasonable or that the requisite public interest is not involved, and consequently that the ordinance does not come within the police power of the city. *City of St. Paul v. Dalsin*, 245 Minn. 325, 329, 71 N.W.2d 855, 858 (1955). To prove an ordinance is unreasonable, a complaining party must show that it "has no substantial relationship to the public health, safety, morals or general welfare." *State v. Hyland*, 431 N.W.2d 868, 872 (Minn.App.1988) (quoting *County of Freeborn v. Claussen*, 295 Minn. 96, 100, 203 N.W.2d 323, 326 (1972)). "[I]f the reasonableness of an ordinance is debatable, the courts will not interfere with the legislative discretion." *Id.* (quoting *State v. Modern Box Makers, Inc.*, 217 Minn. 41, 47, 13 N.W.2d 731, 734 (1944)).

The ordinance at issue requires undergrounding for any permanent extension or replacement of distribution lines of 15,000 volts or less. Oakdale, Minn.Code of Ordinances § 23-41 (July 1997). The stated purpose for the ordinance is to

promote and preserve the general welfare, assure the orderly development of the city, and provide for the safety and convenience of its inhabitants \* \* \*.

Oakdale, Minn.Code of Ordinances § 23-40 (October 1997).

The city asserts that its police power allows it to regulate in the interest of public convenience or general prosperity, including aesthetic considerations. See *County of Pine v. State Dept. of Natural Resources*, 280 N.W.2d 625, 629 (Minn.1979) (holding the Kettle River Wild and Scenic Rivers Ordinance was a valid exercise of police power where it had as its basis aesthetic considerations as well as other traditional zoning objectives, including public safety and limiting pollution); *Naegle Outdoor Adver. Co. v. Village of Minnetonka*, 281 Minn. 492, 499, 162 N.W.2d 206, 212 (1969) (holding that the fact that the billboard regulation at issue reflected a desire to achieve aesthetic ends does not invalidate an otherwise valid ordi-

nance); *Naegle Outdoor Adver., Inc. v. City of Durham*, 844 F.2d 172, 174 (4th Cir.1988) (holding that aesthetic considerations are a valid basis for exercise of the police power over zoning regulation of billboards). While these cases do reflect the position that aesthetic considerations will not invalidate an otherwise valid ordinance, none stand for the proposition that a city may regulate a public utility solely for purposes of convenience and aesthetic value. We decline the invitation to extend the law with respect to municipal regulation of public utilities, and instead apply the more traditional public interest tests of public health, safety, and general welfare. See *Northwestern Tel. Exch.*, 81 Minn. at 147, 83 N.W. at 530; *Holt v. City of Sauk Rapids*, 559 N.W.2d 444, 445 (Minn.App. 1997), review denied (Minn. Apr. 24, 1997); *Hyland*, 431 N.W.2d at 872.

Here the city has clearly included public safety and general welfare as interests the ordinance is intended to protect. We do not believe it can be reasonably disputed that overhead electric lines present a significant hazard to the public, especially in this climate. Utility poles in close proximity to the streets increase the likelihood of injuries resulting from traffic accidents. In addition, street obstructions occasioning improvements while repairing, replacing or relocating utility poles increase the risk of accidents. See *City of Edmonds*, 584 P.2d at 461. Furthermore, downed lines as the result of ice or wind storms not only present a hazard on the ground, but also impact the safety and welfare of people in their homes due to loss of power in the winter months. Based on these considerations, we conclude that requiring electric distribution lines to be placed underground reasonably relates to the city's legitimate interest in public safety and the general welfare of its citizenry.

[17] Having determined that the city had the authority to require undergrounding under Minn.Stat. § 216B.36, and reasonably exercised that authority, we must next examine how the ordinance impacts NSP's commission-approved tariffs.

[18] Since we have determined that the legislature has explicitly granted municipal authority to require distribution line under-

grounding, we do not reach the issue of preemption. See *Mangold Midwest Co. v. Village of Richfield*, 274 Minn. 347, 356, 143 N.W.2d 813, 819 (1966) (defining preemption as the concept of "occupation of the field"). Similarly, when the legislature specifically grants authority to municipalities, the exercise of that authority cannot logically be seen to conflict with state law. See *Northern States Power Co. v. City of Granite Falls*, 463 N.W.2d at 544-45 (stating there is generally no conflict where the ordinance is merely additional and complimentary to or in aid and furtherance of the statute).

Clearly the ordinance and the tariffs conflict. But both the city and NSP claim authority in the MPUA. "The legislature does not intend a result that is absurd, impossible of execution, or unreasonable." Minn.Stat. § 645.17(1) (1993). It would be absurd to interpret the MPUA as granting conflicting authority. Therefore, the extent to which there is conflict is also the extent to which the statutory authority has been exceeded by one of the parties.

We have already determined that the legislature's specific grant of authority to municipalities to require utility line undergrounding must prevail over the general grant of authority to the commission to regulate services. See Minn.Stat. § 645.26, subd. 1. Therefore, to the extent that tariff section 5.1A conflicts with the city's ordinance, the tariff must yield.

[19] Similarly, tariff section 5.3A is unenforceable to the extent that it would require compensation for the city's valid exercise of its authority to regulate utility line undergrounding under the statute. This comports with the long-held view that a city may regulate a utility without compensation in valid exercise of its police power. See *Detroit Edison*, 410 N.W.2d at 297; *Vermont Gas*, 571 A.2d at 46; *City of Longmont*, 948 P.2d at 521; *Northwest Natural Gas*, 711 P.2d at 121; *Appalachian Power Co. v. City of Huntington*, 158 W.Va. 240, 210 S.E.2d 471, 472 (W.Va.1974); *State ex rel. Rich v. Idaho Power Co.*, 81 Idaho 487, 346 P.2d 596, 598 (Id.1959); *New York City Tunnel Auth. v. Consolidated Edison Co. of New York*, 295

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N.Y. 457, 68 N.E.2d 445, 447 (N.Y.1946); *City of Edmonds*, 584 P.2d at 459. The Minnesota Supreme Court has also recognized that legitimate exercise of the police power may prohibit the injurious use of property without compensation. *Lachtman v. Houghton*, 134 Minn. 226, 237, 158 N.W. 1017, 1021-22 (1916).

[20] Furthermore, NSP's argument that this uncompensated regulation would perpetrate an unconstitutional taking fails for two reasons. First, "[i]f the regulation is drawn to prevent harm to the public, broadly defined, and seems able to achieve this goal, then a taking has not occurred." *Zeman v. City of Minneapolis*, 552 N.W.2d 548, 554 (Minn.1996) (citing *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 488-93, 107 S.Ct. 1232, 1243-46, 94 L.Ed.2d 472, (1987)). Second, NSP has a remedy at the public utilities commission. NSP may request that the commission allocate the additional costs of undergrounding to the appropriate group of ratepayers.

NSP further contends that a municipality may not require underground placement of electric lines without compensation because such a requirement creates a conflict with NSP's statutory duty not to discriminate as set forth in Minn.Stat. §§ 216B.06-.07 (1996). NSP argues that, by conferring a special benefit on its citizens, placement of power lines underground, without paying NSP for this improvement, the city requires NSP to collect the costs of those improvements from ratepayers across the state. Thus, all ratepayers outside the City of Oakdale are paying a discriminatory rate.

[21] While we need not decide whether the city's ordinance will result in unreasonable rate discrimination under Minn.Stat. §§ 216B.03 and .07 (1998), we do note that NSP has a statutory remedy that allows NSP to address discriminatory rate concerns, if any, without interfering with the city's duly-enacted ordinance. NSP may request the commission allocate additional costs of complying with the ordinance to the ratepayers benefiting from the service. See Minn.Stat. § 216B.16. This approach is specifically outlined in tariff section 5.3E, which provides in relevant part:

Where special facilities are requested or required by a municipality and payment is not made by the municipality, the excess expenditures will be the responsibility of [NSP's] customers residing within the municipality and will be recovered from those customers through a rate surcharge or other method approved by the Commission.

NSP argues that it should not be required to obtain surcharge approval each time a municipality requires a special installation. NSP cites no authority for this position. The duty to avoid rate discrimination is NSP's duty. See Minn.Stat. §§ 216B.06-.07. The commission has approved tariff section 5.3E and NSP is bound by it.

DECISION

The district court erred when it determined that NSP's rate tariffs at issue did not attain the status of general state law due to procedural deficiencies. However, the district court correctly determined the ordinance in question was authorized by statute. The ordinance is reasonably related to its stated objective of protecting public safety and is neither preempted by nor in conflict with state law.

Affirmed as modified.

HALBROOKS, Judge (concurring in part, dissenting in part).

While I agree with the majority that NSP's rate tariff sections 5.1 and 5.3 have the force of state law, I conclude that Oakdale's ordinance is too broad to be either reasonably related to a legitimate municipal objective or authorized by Minn.Stat. § 216B.36. Therefore, I respectfully dissent.

Oakdale's ordinance is extraordinarily broad. It does not discriminate based on location of power lines or their proximity to public traffic. The ordinance imposes the requirement of underground installation for all electric distribution lines of 15,000 volts or less without regard to any safety or public welfare concerns in a given installation. Further, Oakdale made no findings that underground installation of electric lines would serve the stated public interests. See U.S.

*West Communications v. City of Longmont*, 948 P.2d 509, 521-22 (Colo.1997) (listing factors relevant to its determination of the reasonableness of municipal ordinance requiring relocation of utility lines underground). Although it may be true that overhead electric lines present a hazard in some places, the record before us is not developed on this issue. In fact, NSP has argued that underground lines are significantly more difficult to repair, especially in the winter months when the ground is frozen.

In spite of the fact that the ordinance cites public safety and general welfare as its objectives, see Oakdale, Minn.Code of Ordinances § 23-40 (1997), it is not tailored to meet those objectives. Even assuming overhead electric lines present the hazards mentioned by the majority, this ordinance is overly broad. Under Oakdale's ordinance, a distribution line to a commercial building, traveling across private property and not in any way near a public road or activity, must be installed underground. This bears no relationship to public health, safety and general welfare. The ordinance goes beyond what is necessary to protect the public. See *Village of Blaine v. Independent Sch. Dist. No. 12*, 272 Minn. 343, 353, 138 N.W.2d 32, 39 (1965) (holding that utilities are subject to municipalities' reasonable exercise of police power to protect the consumer and the public). Indeed, it seems to me the only conceivable purpose for a regulation this broad is aesthetic, and I agree with the majority that municipalities have no authority to regulate utilities for aesthetic ends.

Even assuming overhead lines are generally hazardous, this ordinance exceeds Oakdale's statutory authority. See *Northern States Power Co. v. City of Granite Falls*, 463 N.W.2d 541, 543 (Minn.App.1990) (holding municipalities have only the powers granted them by statute), review denied (Minn. Jan. 14, 1991). To interpret the municipal power to require utility line undergrounding as broadly as the city does requires us to ignore the commission's statutory authority to regulate utilities. See Minn.Stat. ch. 216B (1996 & Supp.1997); see also *Computer Tool & Eng'g, Inc. v. Northern States Power Co.*, 453 N.W.2d

569, 572 (Minn.App.1990), review denied (Minn. May 23, 1990).

Agency powers must be construed in light of the purpose for which they were granted. *State ex rel. Waste Management Board v. Brueschoff*, 343 N.W.2d 292, 295 (Minn.App. 1984). The commission is charged with the responsibility of balancing the public need for adequate, efficient and reasonable service against the utility's need to meet the cost of providing the service and earn a fair profit. Minn.Stat. § 216B.16, subd. 6 (1996); *Computer Tool*, 453 N.W.2d at 373. The stated purpose of the chapter is to provide

adequate and reliable services at reasonable rates, consistent with the financial and economic requirements of public utilities and their need to construct facilities to provide such services \* \* \*

Minn.Stat. § 216B.01 (1996). To interpret Minn.Stat. § 216B.36 as granting a broad new power to require undergrounding conflicts with the chapter's general purpose of localizing regulatory powers in the commission. Minn.Stat. § 216B.01 (1996); see also Minn.Stat. § 645.16 (1996) (asserting that legislative intent may be determined by the occasion and necessity for the law, and the object to be attained); Minn.Stat. § 216B.86 (1996) (declaring that the MPUA is complete in itself, and that other statutes are inapplicable to the regulation of public utilities by the commission).

When a general provision of law conflicts with a specific provision, the two should be construed, if possible, to give effect to both. Minn.Stat. § 645.26, subd. 1 (1996). In order to give all provisions of the statute meaning, section 216B.36 must be interpreted to only reserve pre-existing police powers of the municipality to require underground placement of utility lines as part of its authority to regulate the streets and public property. See Minn.Stat. § 222.37 (1996). The exercise of those powers is limited to that which is reasonably related to the public interests of public health, safety and general welfare. See *State v. Hyland*, 491 N.W.2d 868, 872 (Minn.App.1988). Since the ordinance here exceeds that authority, it should be declared invalid and its enforcement enjoined. The

foreign authorities cited by the majority are not persuasive to the contrary.

Instances where courts have upheld local regulation of utility line placement have been limited to regulation incidental to major public works projects. See *Detroit Edison Co. v. Southeastern Michigan Transp. Auth.*, 161 Mich.App. 28, 410 N.W.2d 295, 296-97 (Mich. Ct.App.1987); *Vermont Gas Sys., Inc. v. City of Burlington*, 153 Vt. 210, 571 A.2d 45, 46 (Vt.1990); *City & County of Denver v. Mountain States Tel. & Tel. Co.*, 754 P.2d 1172, 1176 (Colo.1988); *Northwest Natural Gas v. City of Portland*, 300 Or. 291, 711 P.2d 119, 121 (Or.1985); *Appalachian Power Co. v. City of Huntington*, 158 W.Va. 240, 210 S.E.2d 471, 472 (W.Va.1974); *City of Philadelphia v. Pennsylvania Pub. Util. Comm'n.*, 449 Pa. 402, 296 A.2d 804, 808-09 (Pa.1972); *New York City Tunnel Auth. v. Consolidated Edison Co.*, 295 N.Y. 467, 68 N.E.2d 445, 447-48 (N.Y.1946); *City of Edmonds v. General Tel. Co., Inc.*, 21 Wash.App. 218, 584 P.2d 458, 459 (Wash.Ct.App.1978). Were Oakdale's ordinance related to a public works project, undertaken in the interest of public health and welfare, the issue before us would be significantly different. See *New Orleans Gaslight Co. v. Drainage Comm'n.*, 197 U.S. 433, 460-61, 25 S.Ct. 471, 473, 49 L.Ed. 831 (1905) (holding imposition on gas company of the costs of relocating gas pipes to accommodate construction of municipal drainage system was an exercise of the police power essential to the health of the community).

Furthermore, the recent Colorado Supreme Court decision, *City of Longmont*, is both factually and legally distinguishable from the instant case. First, that case involved an ordinance requiring undergrounding of utility lines in conjunction with a public works project undertaken by the city-owned electric utility, undergrounding its own utility lines. *City of Longmont*, 948 P.2d at 513. Second, the ordinance only required undergrounding for those lines that shared utility poles with the city-owned lines. *Id.* Third, the city made specific findings as to how the undergrounding would further the health, safety, and welfare of city residents. *Id.* at 521. Fourth, the city agreed to excavate and

back-fill the trench necessary for undergrounding. *Id.* Finally, the Colorado legislature had passed a statute expressly providing municipal regulation over the location of utility poles. *Id.* at 519; see also *Colo.Rev.Stat. § 31-15-702* (1997).

Although there is no precedent for municipal regulation of utility line placement as broad as Oakdale assumes, many courts have invalidated local ordinances requiring utility line undergrounding. See *Cleveland Elec. Illum. Co. v. City of Painesville*, 10 Ohio App.2d 85, 226 N.E.2d 145, 149 (Ohio Ct.App. 1967); *Vandehel Developers v. Public Serv. Comm'n.*, 790 P.2d 1282, 1285-87 (Wyo.1990); *Public Serv. Co. v. Town of Hampton*, 120 N.H. 68, 411 A.2d 164, 166 (N.H.1980); *Union Elec. Co. v. City of Crestwood*, 499 S.W.2d 480, 483-84 (Mo.1973); *In re Public Serv. Elec. & Gas Co.*, 35 N.J. 358, 173 A.2d 233, 239 (N.J.1961).

Oakdale's ordinance does not reasonably relate to a legitimate municipal objective. The ordinance also exceeds Oakdale's statutory authority. Therefore, I would reverse the trial court's judgment.



K.R., Appellant,

v.

Brandon SANFORD, et al., Defendants,

The Committee, Inc., d/b/a First Avenue  
& 7th St. Entry, Respondent.

No. C2-98-1377.

Court of Appeals of Minnesota.

Feb. 3, 1999.

Bartender brought action against her employer under Liquor Act's civil liability section, also known as the Civil Damage Act (CDA), seeking recovery for injuries she sustained when she was sexually assaulted by man for whom she illegally purchased bottle

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

<b>IN THE MATTER OF THE ONE-TIME SPECIAL</b>	)	<b>FINDINGS OF FACT AND</b>
<b>UNDERGROUND ASSESSMENT BY</b>	)	<b>CONCLUSIONS OF LAW;</b>
<b>NORTHERN STATES POWER COMPANY IN</b>	)	<b>NOTICE OF ENTRY OF</b>
<b>SIoux FALLS, SOUTH DAKOTA</b>	)	<b>ORDER</b>
	)	<b>EL99-019</b>

Sioux Falls ordinances require Northern States Power Company (NSP) to relocate overhead facilities in the downtown Sioux Falls area to underground whenever the streets are resurfaced. Certain streets in downtown Sioux Falls were resurfaced in 1999. The NSP Tariff provides that NSP will comply with lawful orders of a municipality and that NSP will charge the cost of the project to the benefited customers. South Dakota Electric Rate Book, Section No. 6, Original Sheet No. 29, Section 5.5 (effective 12-16-96). NSP determined that the benefited customers in this matter were NSP's Sioux Falls customers.

On November 1, 1999, at a regularly scheduled meeting, the Commission voted to open a docket to determine the definition of "benefited customer" in this matter (Commissioner Laska Schoenfelder dissenting).

At its December 28, 1999, meeting, the Commission considered how to proceed with this matter. After listening to comments, the Commission voted to hold a hearing to determine whether NSP correctly determined who are the benefited customers.

The hearing was held as scheduled on January 27, 2000, beginning at 7:00 o'clock P.M., CST, in the Minnehaha County Commission Meeting Room, located on the second floor of the County Administration Building, 415 N. Dakota, Sioux Falls, South Dakota. At the close of the hearing, the Commission took the matter under advisement. On February 11, 2000, NSP filed responses to questions that it was unable to answer at the hearing. This document will be referred to as Exhibit 4.

At its February 29, 2000, meeting, the Commission considered this matter. The Commission voted unanimously to find NSP's determination that all of its Sioux Falls customers benefited was incorrect. NSP failed to show that the two and a half block underground placement of a 13,800 volt three-phase feeder line benefited all of its Sioux Falls customers. The Commission also moved that NSP credit its customers the one-time special underground assessment of \$2.16. For those people who paid the assessment but are no longer NSP customers, the Commission required NSP to refund the assessment upon request.

Based on the evidence of record, the Commission makes the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. NSP is an electric utility that serves approximately 53,000 customers within the city of Sioux Falls. Exhibit 4, Answer to Question 4. NSP estimated that the total number of electric customers in Sioux Falls is about 57,000 customers. *Id.*

2. Sioux Falls city ordinances require that overhead lines located in an area the city has designated as an urban renewal area be placed underground when affected streets are resurfaced. Exhibit 3, Article V. Overhead Utility Wiring in Urban Renewal Area, § 41-131. In the summer of 1999, as required by the ordinances, NSP placed a 13,800 volt three-phase feeder line underground for a distance of two and one half blocks along 12th Street located in downtown Sioux Falls. Tr. at 9, 11.

3. Pursuant to NSP's tariff, if NSP replaces overhead facilities with underground facilities upon the request of a customer, a group of customers, or upon lawful order of a municipality, the benefited customers will be charged certain costs associated with that placement. Exhibit 3, South Dakota Electric Rate Book, Section No. 6, Original Sheet No. 29, 5.5 Replacement of Overhead with Underground, Part A. General. The tariff further provides that "[t]he customer, at his expense, must engage an electrician to convert or adapt his electrical facilities to accept service from the underground facilities to be installed." *Id.* The city ordinance contemplates that benefited customers only pay for their expenses to convert their service. Exhibit 3, Article V. Overhead Utility Wiring in Urban Renewal Area, § 41-132.

4. At the hearing, Jim Wilcox, manager of government and regulatory services for NSP, stated that there were seven commercial customers along the north side of the street that had to reconfigure their electric service to hook up to the new underground line. Tr. at 37. This statement was later corrected in NSP's responses filed after the hearing. Exhibit 4, Answer to Question 2. NSP clarified that four of the seven customers receive service from other locations. *Id.* Three of the commercial customers incurred costs to reconnect to the new underground system. *Id.*

5. At the hearing, Mr. Wilcox testified that he considered five separate groups as those who "might be available to pay for a project like this." Tr. at 17. He explored the possibility of the city of Sioux Falls contributing to the cost, but was told that the city would not pay and that he had to find another way to pay for the project. Tr. at 27. He rejected charging NSP shareholders since they did not ask for the project. Tr. at 17. He also looked at the three hundred customers who live in the urban renewal area but thought the cost of several hundred dollars assessed to each would not be fair. *Id.* He rejected those customers living along the two and one half blocks for the same reason. Tr. at 17-18. He then decided that "asking all of our customers in Sioux Falls to contribute was the best way." Tr. at 21.

6. Mr. Wilcox stated that since the city ordinance is passed by a city council that represents all of the citizens of Sioux Falls then NSP's Sioux Falls customers were the best proxy for all of Sioux Falls citizens. Tr. at 20. However, since NSP does not serve approximately 4000 Sioux Falls citizens, those citizens would not be charged.

7. NSP charged each of its Sioux Falls customers \$2.04 plus \$.12 for sales tax, based on an incremental cost of \$108,299.99. Exhibit 3, City of Sioux Falls Special Undergrounding Project; Tr. at 21.

8. The city ordinances, as presented at the hearing, are silent as to any reasons for requiring the lines to be placed underground. Article V. Overhead Utility Wiring in Urban

Renewal Area, §§ 41-130 through 41-132. The overground line was operational and the only rationale put forward for the requirement to underground the line was aesthetics. Tr. at 17. NSP's standard is to not bury this type of feeder line, although NSP has buried this type of line if required for safety reasons. Tr. at 38, 47-48.

9. The city ordinance requires that the affected utility prepare a general written policy that must be approved by the city. Exhibit 3, Article V. Overhead Utility Wiring in Urban Renewal Area, § 41-132. Although it was NSP's position that its tariff was its general written policy, Mr. Wilcox was unaware if the tariff was ever submitted to and approved by the city. Tr. at 23-24.

10. The Commission finds that NSP failed to show that all of its Sioux Falls customers were "benefited customers" pursuant to the tariff. The line was not placed underground for operational, safety, or economic reasons. The only possible benefit brought out at the hearing as to why the line was placed underground lines was aesthetics. The Commission questions how all of NSP's Sioux Falls customers benefited from the burying of a line for purely aesthetic purposes in downtown Sioux Falls. The Commission finds that just because the city council passed an ordinance, it does not necessarily follow that NSP's Sioux Falls customers can be considered "benefited customers" as contemplated by the tariff approved by the Commission. At a minimum, in order to be considered a "benefited customer" under the tariff, the customer should have either requested the underground placement or received a more tangible benefit than driving or walking down a street with buried electric lines. Moreover, it appears that NSP's determination of who were the benefited customers was based more on who had the ability to pay rather than who benefited.

11. The Commission further finds that it is unable to determine from the current record which customer, if any, benefited from the underground placement of the 13,800 volt three-phase feeder line.

12. The Commission finds that since NSP's Sioux Falls customers cannot be considered the "benefited customers" under the tariff, NSP shall credit its Sioux Falls customers the one-time special underground assessment of \$2.16. For those people who paid the assessment but are no longer NSP customers, NSP shall refund the assessment upon request.

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-34A, specifically 49-34A-2, 49-34A-3, 49-34A-4, 49-34A-6, 49-34A-8, 49-34A-11, 49-34A-26, and 49-34A-27.

2. Sioux Falls city ordinances require that overhead lines located in an area the city has designated as an urban renewal area be placed underground when affected streets are resurfaced. Exhibit 3, Article V. Overhead Utility Wiring in Urban Renewal Area, § 41-131.

3. Pursuant to NSP's tariff, if NSP replaces overhead facilities with underground facilities upon the request of a customer, a group of customers, or upon lawful order of a

municipality the benefited customers will be charged certain costs associated with that placement. Exhibit 3, South Dakota Electric Rate Book, Section No. 6, Original Sheet No. 29, 5.5 Replacement of Overhead with Underground, Part A. General. The tariff further provides that "[t]he customer, at his expense, must engage an electrician to convert or adapt his electrical facilities to accept service from the underground facilities to be installed." *Id.* The city ordinance contemplates that benefited customers only pay for their expenses to convert their service. Exhibit 3, Article V. Overhead Utility Wiring in Urban Renewal Area, § 41-132.

4. The Commission finds that NSP has failed to show that all of its Sioux Falls customers were "benefited customers" pursuant to the tariff for the reasons set forth in Finding of Fact 10.

It is therefore

ORDERED, that NSP shall credit its Sioux Falls customers the one-time special underground assessment of \$2.16. For those people who paid the assessment but are no longer NSP customers, NSP shall refund the assessment upon request.

#### NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 14<sup>th</sup> day of March, 2000. Pursuant to SDCL 1-26-32, this Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 14<sup>th</sup> day of March, 2000.

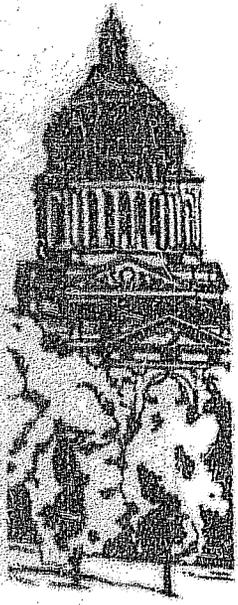
CERTIFICATE OF SERVICE	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By: <u>Helaine Kelbo</u>	
Date: <u>3/14/00</u>	
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

James A. Burg  
JAMES A. BURG, Chairman

Pam Nelson  
PAM NELSON, Commissioner

Laska Schoenfelder  
LASKA SCHOENFELDER, Commissioner



# South Dakota Public Utilities Commission



State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

## NEWS RELEASE

**FOR IMMEDIATE RELEASE**  
January 7, 2000

**CONTACT: Bill Bullard**  
605-773-3201

### PUBLIC HEARING SCHEDULED ON NSP SURCHARGE

Pierre--The South Dakota Public Utilities Commission will hold a public hearing beginning at 8:30 a.m. on Friday, January 28, 2000, in the Minnehaha County Commission Meeting Room in the County Administration Building, 415 N. Dakota, Sioux Falls, South Dakota.

The purpose of the public hearing is to hear testimony regarding the \$2.00 per household surcharge Northern States Power Company imposed on all of its Sioux Falls customers in its November, 1999, billing cycle. The \$2.00 surcharge represents each customer's contribution to the cost of burying NSP's overhead electric facilities along 12th Street in downtown Sioux Falls.

Sioux Falls city ordinances require NSP to bury its overhead facilities in the downtown area whenever the streets are resurfaced. The PUC order scheduling the public hearing explains that the company's tariff allows NSP to charge the costs of such a project to the benefitted customers. "NSP determined that the benefitted customers in this matter were NSP's Sioux Falls customers," states the order.

The PUC will consider testimony from its staff, the public, the city, and NSP to determine whether NSP correctly identified the benefitted customers. All interested persons are invited to attend the hearing. Persons in need of special accommodations should contact the Public Utilities Commission at 1-800-332-1782 at least 48 hours prior to the hearing so necessary arrangements can be made.

(30)

Capitol Office  
Telephone: (605)773-3301  
FAX: (605)773-3809

Transportation/  
Warehouse Division  
Telephone: (605)773-5280  
FAX: (605)773-3225

Consumer Hotline  
1-800-332-1782

TTY Through  
Relay South Dakota  
1-800-877-4113

Internet Website  
[www.puc.state.sd.us/puc/](http://www.puc.state.sd.us/puc/)

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Chairman  
Paul Nelson  
Vice-Chairman  
Linda Schwenfelder  
Commissioner

William Bullard Jr.  
Executive Director

Helen Best  
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Michelle M. Ferris  
Melissa Fischbach  
Heather K. Foeray  
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Mary Giddings  
Lynne Hammond  
Lori Healy  
Caryn Hoeck  
Lara Mull  
Dave Jacobson  
Bob Knudde  
Dulcie Knudde  
Charlene Lund  
Gregory A. Ralov  
Keith Senger  
Roslyn Aita Wiest

## **PUBLIC INVITED TO ATTEND HEARING ON NSP SURCHARGE**

The South Dakota Public Utilities Commission will hold a public hearing beginning at 8:30 a.m., January 28, 2000, in the Minnehaha County Commission Meeting Room in the County Administration Building, 415 N. Dakota, Sioux Falls, SD.

The PUC will hear testimony concerning the \$2.00 per household surcharge NSP imposed on all of its Sioux Falls customers in November. The \$2.00 surcharge represents a contribution to the cost of burying NSP's overhead electric facilities along 12th Street in downtown Sioux Falls.

The purpose of the hearing is to determine who are the benefitted customers of NSP's underground project as the company's tariff allows the cost of such projects to be charged to the "benefitted" customers.

All interested persons are invited to attend the hearing. Persons in need of special accommodations should call 1-800-332-1782 at least 48 hours prior to the hearing so necessary arrangements can be made.



# South Dakota Public Utilities Commission



State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

## PUBLIC SERVICE ANNOUNCEMENT

FOR IMMEDIATE RELEASE  
January 18, 2000

CONTACT: Bill Bullard  
605-773-3201

### PUC RESCHEDULES PUBLIC HEARING ON NSP SURCHARGE

Pierre—In response to consumer requests for an evening meeting, the South Dakota Public Utilities Commission has changed the date and time for its public hearing on Northern States Power Company's (NSP's) recent \$2.00 surcharge. The public hearing will begin at 7:00 p.m. on Thursday, January 27, 2000, in the Minnehaha County Commission Meeting Room in the County Administration Building, 415 N. Dakota, Sioux Falls, South Dakota.

The purpose of the public hearing is to hear testimony regarding the \$2.00 per household surcharge NSP already imposed on all of its Sioux Falls customers in its November, 1999, billing cycle. The \$2.00 surcharge represents each customer's contribution to the cost of burying NSP's overhead electric facilities along 12th Street in downtown Sioux Falls.

Sioux Falls city ordinances require NSP to bury its overhead facilities in the downtown area whenever the streets are resurfaced. The PUC order scheduling the public hearing explains that the company's tariff allows NSP to charge the costs of such a project to the benefitted customers. "NSP determined that the benefitted customers in this matter were NSP's Sioux Falls customers," states the order.

The PUC will consider testimony from its staff, the public, the city, and NSP to determine whether NSP correctly identified the benefitted customers. All interested persons are invited to attend the hearing. Persons in need of special accommodations should contact the Public Utilities Commission at 1-800-332-1782 at least 48 hours prior to the hearing so necessary arrangements can be made.

(30)

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Mary Giddings  
Loretta Hammond  
Lori Healy  
Cynthia Horvath  
Lisa Hill  
Dave Jacobson  
Bob Kautle  
Debbie Kollo  
Charlene Lund  
Gregory A. Bishop  
Kathi Senger  
Kathryn Althe Wien

DETACH THIS STUB AND RETURN WITH PAYMENT

PAYMENT DUE UPON RECEIPT

AFFIDAVIT OF PUBLICATION-

AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA

COUNTY OF MINNEHAHA } ss

Diana Reicher being duly sworn, says: That The Argus Leader is, and during all the times hereinafter mentioned was, a daily legal newspaper as defined by SDCL 17-2-21, as amended published at Sioux Falls, Minnehaha County, South Dakota; that affiant is and during all of said times, was an employee of the publisher of such newspaper and has personal knowledge of the facts stated in this affidavit; that the notice, order or advertisement, a printed copy of which is hereto attached, was published in said newspaper upon

Mon, the 24th day of January 2000,
, the day of 2000,

and that \$264.00 was charged for publishing the same for display advertising.

Diana Reicher

Subscribed and sworn to before me April 3, 2000,

JUDY WIESE
NOTARY PUBLIC
SOUTH DAKOTA

Judy Wiese
Notary Public, South Dakota

My Commission expires November 3, 2000

PUBLIC INVITED TO ATTEND PUC HEARING ON NSP SURCHARGE

The South Dakota Public Utilities hold a public hearing beginning at 7:00 p.m. on Monday, April 27, 2000, in the Minnehaha County Meeting Room, in the County Administration Building, 415 N. Dakota, Sioux Falls, SD

The PUC will hear testimony concerning the proposed per household surcharge NSP imposed on Sioux Falls customers in November 1999. The surcharge represents a contribution to help defray the cost of burying NSP's overhead electric facilities in downtown Sioux Falls.

The purpose of the hearing is to allow interested parties to be heard. The benefited customers of NSP are the benefited customers of NSP. The project as the company's tariff allows the project to be charged to the benefited customers.

All interested persons are invited to attend the hearing. Persons in need of special accommodations should call 1-800-332-1782 at least 10 business days before the hearing so necessary arrangements can be made.

Forney, Heather

From: Wilcox, James C [james.c.wilcox@nspco.com]  
Sent: Wednesday, December 15, 1999 5:05 PM  
To: Heather.Forney@state.sd.us  
Cc: 'Dave Gerdes (preferred)'  
Subject: RE: Sioux Falls Surcharge Issue

Heather,

The process sounds good to me.  
Following are the data I believe you need.

Sincerely,

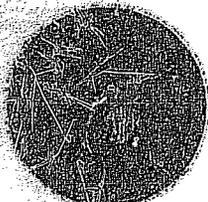
Jim Wilcox

Sioux Falls Urban Renewal Area  
customercount  
Commercial 234  
Industrial 33  
Residential 40  
Total 307

Customers along 12th Street (3 blocks on the north side between Main and 2nd

address	customer name
404 W 12TH ST	AUTOMATIC TRANSMIS SERV <i>P.O. Box 1241 57101-1241</i>
426 W 12TH ST	1ST NATL BANK <i>100 S. Phillips Ave 57104</i>
410 E 12TH ST	ASSOC CONSULTING ENGINEERS <i>Natice + Neius Release</i>
410 E 12TH ST	SPENCER FURNITURE <i>57104</i>
200 E 12TH ST	EPSTEIN SID
214 E 12TH ST	B & R INC
232 E 12TH ST	BECHTEL INS

*City of Sioux Falls Natice + Neius Release*



# City of Sioux Falls

## Administration

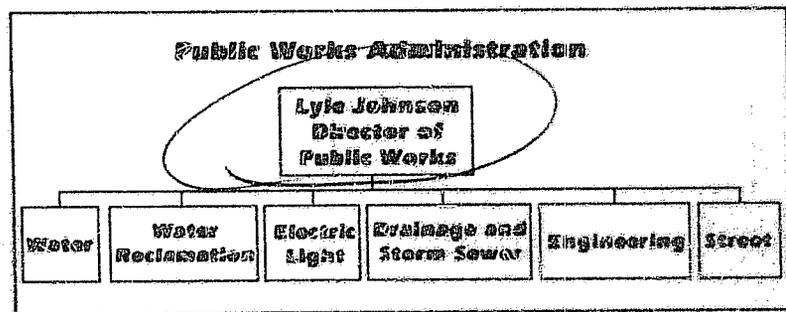
224 West Ninth Street (First Floor)  
Sioux Falls, SD 57104  
57104-6407  
(605) 367-7143

*Mailed Amended  
order to these  
two.*

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- City Hall
- Job Opportunities
- City Department
- Transit Routes
- Sites & Attractions
- FAQ's
- General Information
- News Releases
- Search
- Email
- Disclaimer

Hours: 8 a.m. to 5 p.m.

The Administration Division of Public Works coordinates and manages the Water, Water Reclamation, Electric Light, Drainage and Storm Sewer, Engineering, and Street Divisions to provide the safe and efficient delivery of services to the public.



The mission and overall function of each division follows:

### Water Division

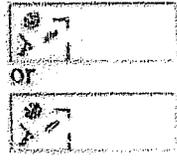
The Water Division is responsible for the management, planning, operation, and maintenance of all phases of water supply, treatment, storage, and distribution. Over 32,344 meters serve approximately 114,000 customers, including the North Lincoln County Rural Water System. Fees generated from water sales are used to fund operating expenses, debt service, and capital improvements.

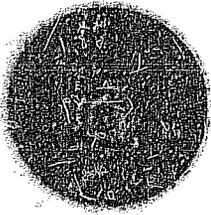
### Water Reclamation Division

The Water Reclamation Division handles the collection and treatment of wastewater for the City of Sioux Falls and three nearby sanitary districts. Wastewater facilities include a modern advanced treatment facility, 29 lift stations, and over 451 miles of sanitary sewer lines.

### Light Division

The mission of the Sioux Falls Municipal Power and Light Division is to supply reliable energy to its more than 1,513 residential, 326 commercial nongovernmental, and 418 governmental accounts. The Light Division continues to upgrade





# City of Sioux Falls

## Planning and Building

224 West Ninth Street (Second Floor)  
Sioux Falls, SD 57104  
57104-6407  
(605)367-8888

*Steve Mettli*  
*City Planning Director*

Hours: 8 a.m. to 5 p.m.

The Planning Office is responsible for the following:

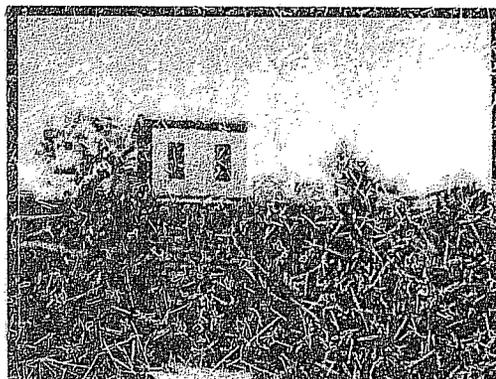
- Long-Range Planning
- Current Planning
- Planning Data and Information
- Transportation and Transit Planning
- Historic Preservation

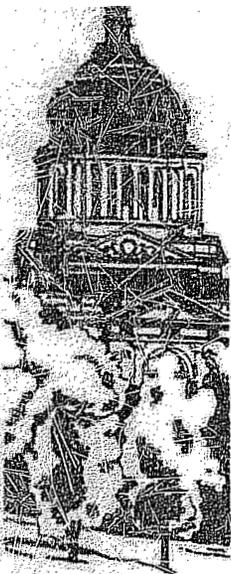
The following page links contain current information for:

- [Office Calendar and Meeting Dates\\*\\*](#)
- [Planning Commission Agenda: January, 2000](#)
- [2000 Hearing Schedule for Rezoning](#)
- [2000 Hearing Schedule for Conditional Uses and Planned Development Amendments](#)
- [2000 Hearing Schedule for Board of Adjustment](#)
- [2000 Board of Appeals Schedule](#)
- [2000 Electrical Board of Appeals and Examiners Schedule](#)
- [2000 Mechanical Board of Appeals and Examiners Schedule](#)
- [2000 Building Contractor Licensing Exam Schedule](#)
- [2000 Electrical Examination Schedule](#)
- [2000 Mechanical Exam Schedule](#)
- [2000 City of Sioux Falls Zoning Map\\*\\*](#)

\*\* In order to view his document, your web browser requires Adobe Acrobat Reader. This can be downloaded from Adobe's web site at no charge.

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# South Dakota Public Utilities Commission



State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

April 21, 2000

Ms. Mary Erickson  
Clerk of Courts  
P. O. Box 1238  
Pierre, SD 57501-1238

Re: In the Matter of the One-Time Special  
Underground Assessment by Northern  
States Power Company in Sioux Falls,  
South Dakota  
Civ. 00-127 (Docket EL99-019)

Dear Ms. Erickson:

Enclosed you will find our original file with reference to the above captioned matter. Also enclosed you will find a Chronological Index, Alphabetical Index and Certificate of Service. We have served a copy of the Chronological Index and Alphabetical Index on all interested parties.

Very truly yours,

Karen E. Cremer  
Special Assistant Attorney General

KEC:dk  
Enc.

Capital Office  
Telephone (605)773-3201  
FAX (605)773-3879

Transportation/  
Warehouses Division  
Telephone (605)773-5290  
FAX (605)773-3225

Consumer Hotline  
1-800-332-1782

TTY Through  
Relay South Dakota  
1-800-877-1113

Internet Website  
[www.state.sd.us/puc/](http://www.state.sd.us/puc/)

Jan Burg  
Chairman  
Paul Nelson  
Vice-Chairman  
Lawla Schoenfelder  
Commissioner

William Bullard Jr.  
Executive Director

- Herman Best
- Martin C. Bettmann
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- Mary Healy
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- Lisa Hull
- Dave Jacobson
- Jessie Kirk
- Bob Knadle
- Delaine Kolbo
- Charlene Lund
- Gregory A. Rinov
- Karin Seapp
- Kolayna Aika Wiese





CERTIFICATE OF SERVICE  
CIV. 00-127

I hereby certify that a copy of the Chronological Index and Alphabetical Index were served on the following by mailing the same to them by United States Post Office First Class Mail, postage thereon prepaid, at the address shown below on this the 21st day of April, 2000.

Mr. David A. Gerdes  
Attorney at Law  
May, Adam, Gerdes & Thompson LLP  
P. O. Box 160  
Pierre, SD 57501-0160

Mr. Jim Wilcox  
Manager  
Government & Regulatory Services  
Northern States Power Company  
P. O. Box 988  
Sioux Falls, SD 57101-0988

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Karen E. Cremer  
Special Assistant Attorney General  
South Dakota Public Utilities Commission  
500 East Capitol  
Pierre, SD 57501