

1 MS. WIEST: Exhibit 16 has been offered and  
2 received.

3 MR. CHRISTENSON: I would call Tim Chance.

4 **TIM CHANCE,**

5 called as a witness, being first duly sworn,  
6 was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. CHRISTENSON:

9 Q. Would you state your name?

10 A. Tim Chance.

11 Q. And where do you live?

12 A. Alcester, South Dakota.

13 Q. And where do you work?

14 A. At Southeastern Electric.

15 Q. And how long have you worked for Southeastern  
16 Electric?

17 A. Just about 27 years.

18 Q. And tell the Commission a little bit about your  
19 education.

20 A. Graduated high school, went to one year of  
21 vocational, and then I took apprenticeship program, a  
22 four-year apprenticeship program under Lincoln or  
23 Southeast.

24 Q. Where did you graduate from high school from?

25 A. Howard High School.

1 Q. What does your apprenticeship entail?

2 A. I was an electrical journeyman, lineman, power  
3 lineman apprenticeship, took four years and got to put  
4 your time plus your testing and school in.

5 Q. Throughout your 27 years of employment with this  
6 rural electric co-op, what were some of your jobs that you  
7 have done?

8 A. Oh, anywhere from building the line, reading the  
9 maps, going to where we need to go, determining just about  
10 anything to do with physical plant at Southeastern.

11 Q. And where was most of this work done?

12 A. In the territory that Southeastern covers. It  
13 covers from, oh, part of Union County, Lincoln County, a  
14 little bit of Minnehaha, Turner, a little bit of Clay and  
15 those counties.

16 Q. Now, with that I'll ask you to step over here.  
17 We're going to use this overhead, and I'm going to have  
18 some of the exhibits placed on that screen. And I'll ask  
19 that Exhibit No. 6 be placed on the screen.

20 Mr. Chance, would you please explain what that  
21 exhibit is?

22 A. It's a map of Lincoln County. It shows sections  
23 and townships of Lincoln County.

24 Q. In your work do you usually work with maps like  
25 this?

1 A. We use the maps all the time.

2 Q. And for your use what does this map depict?

3 A. It depicts the sections in a given township. It  
4 shows us where the roads are. It, you know, basically  
5 tells us where, you know, we -- pinpoint of where we need  
6 to pinpoint the area we need to go to.

7 Q. Do these maps assist you in locating where service  
8 should be provided in the various service areas?

9 A. Yes, it does.

10 Q. Okay. Let's move on to Exhibit 7. Would you  
11 please tell us what Exhibit 7 depicts?

12 A. It depicts on the top part here a normal section.  
13 A normal section is a mile by a mile and continues in  
14 around and in a section they divided it into four  
15 quarters. We can -- from this section we can find  
16 specific points in them sections and find out, you know,  
17 who owns that apparent section or, you know, what that  
18 section is telling us.

19 Q. Over your 27 years have you come to know the  
20 definition of what's called a center point?

21 A. Yes.

22 Q. And what is that?

23 A. The center point is usually right in the middle of  
24 a section.

25 Q. Okay. And that's equidistant from the east and

1 west boundaries of the section?

2 A. Yes.

3 Q. Now, based on your 27 years of experience, how far  
4 is it in a section from the center point to say the east  
5 edge of the section?

6 A. It's normally a half mile. It's a half mile.

7 Q. And that line that you just pointed at in the  
8 middle of that exhibit, what would you normally call that  
9 in your work?

10 A. We would normally call it the half mile line.

11 Q. Is that half mile line, that term, is that  
12 significant to you in your work?

13 A. Yes. It's normally from this intersection here to  
14 hear is a half mile, so it's something of a measuring tool  
15 that you can measure off to and find that point.

16 Q. And the lower right-hand corner of Exhibit 7, what  
17 does that depict?

18 A. That depicts a section with a north and west  
19 correctional section, or fractional section, and basically  
20 shows us what actually seven, Section 7 looks like.

21 Q. Now, today we've talked a lot about Section 7, and  
22 I believe it's Delapre Township in Lincoln County?

23 A. Yes.

24 Q. How does this exhibit in the lower right-hand  
25 corner relate to our discussion today?

1           A.    You take the section, or any of these, this  
2 section or that section, and you apply the terminology to  
3 them sections.

4           Q.    Now, in the lower right-hand it says 160, and it  
5 appears to me to be a square. What does that represent to  
6 you?

7           A.    It represents the southeast corner of that section  
8 pertaining to there's 160 acres per quarter to a total of  
9 488 acres. So this shows this is a full quarter and that  
10 this one here is an 80, so that's a half. The rest is  
11 called government lots and they're partials of that 80 or  
12 whatever. It's not a full 80 or a full quarter.

13          Q.    Let's move to Exhibit No. 8. Now, Mr. Chance,  
14 what does this exhibit depict to you?

15          A.    This is the original map that was agreed upon from  
16 Southeastern and Xcel. It's a portion of that map.

17          Q.    Have you ever seen this map before?

18          A.    Yes.

19          Q.    Have you ever reviewed it in your work?

20          A.    Yes.

21          Q.    In your work has this map proven to be reliable?

22          A.    Yes.

23          Q.    Have you ever before this day had any quarrel with  
24 any direction on this map?

25          A.    No.

1 Q. Would you point out to the Commission where the  
2 Delapre Township is, Section 7?

3 A. It's right here.

4 Q. Now, in your work did you ever have the  
5 opportunity to read this map and ascertain where the  
6 service boundary line is for Southeastern?

7 A. Yes.

8 Q. And how did you do that?

9 A. You take the map and you take the description and  
10 you read the description and you apply the description to  
11 the map.

12 Q. Okay. Let's pull out, full -- I'm going to hand  
13 you what's been marked as Exhibit No. 16. Now, Mr.  
14 Chance, looking at Exhibit 16, can you find the page where  
15 the legal description is for this boundary line?

16 A. Yeah, it's on page four, Exhibit B, and Section 7  
17 it starts on number one.

18 Q. Would you take the Commission through how you  
19 figured that description?

20 A. It says right at number one, beginning at the  
21 north centerline of Section 7, Range 50 West, Township  
22 100, so you have to find out where that is and it's right  
23 there, and usually it's always considered in the center  
24 just like a normal section. So that would be that  
25 Northern point right there.

1 Q. And then what did you do next?

2 A. It says go south to the center point of Section 7.  
3 So you follow it south until you find your center point of  
4 Section 7, which would be usually a quarter section or a  
5 quarter line.

6 Q. And then what did you do?

7 A. Then I followed that quarter line or east along  
8 the half mile line to center of I-29 and Section 7 so I  
9 follow that.

10 Q. Now, on that third call or description does the  
11 half mile line, did that have any significance to you?

12 A. Yes.

13 Q. And what was that significance?

14 A. I can measure from the south going north and find  
15 that quarter section, or I can go to a plat map and find  
16 where that quarter section line is.

17 Q. Did you have any trouble whatsoever reading this  
18 legal description and following it on this map?

19 A. No.

20 Q. In your view of 27 years' experience, was there  
21 any discrepancy between the legal description and this  
22 map?

23 A. No.

24 Q. Let's move on to Exhibit No. 9. What does that  
25 exhibit depict?

1 A. That is the original government survey that was  
2 done back in the 1850's.

3 Q. Of this Delapre?

4 A. Of the Delapre Township, Section 7 and 8, 9 and on  
5 down.

6 Q. Could you mark with a colored marker the Section  
7 7?

8 A. (Witness complied.)

9 Q. Now, if you could take -- do you have a different  
10 colored pen over there? Use your green pen. Based on  
11 your experience and training and would you draw on that  
12 section your understanding of what the legal description  
13 is?

14 A. Okay. All right. Again, you got the map. You  
15 said beginning at the north centerline. North centerline  
16 would be between, you got one, two, three, four government  
17 lots so it would be between two and three. And it says  
18 you start there on Section 7, township, range, south to  
19 the center point, which would be here, and then east along  
20 the half mile line to the center of I-29, which would be  
21 approximately in there.

22 Q. Okay. Now, that half mile line you just  
23 mentioned, it's my understanding it coincides with 61st  
24 Street; is that correct?

25 A. Yes.

1 Q. And, the best of your understanding, when was this  
2 survey done?

3 A. In the 1850's.

4 Q. Let's move on to Exhibit No. 10. Would you please  
5 depict what that is?

6 A. That is a township, it's called Perry Township,  
7 it's Township 99 North, Range 51 West.

8 Q. Is that also depicted on the map that the  
9 Commission has on file?

10 A. Yes.

11 Q. Now, would you just as an example on this, explain  
12 to the Commission how you read a legal description and  
13 apply it to a map?

14 A. Okay. This would be also on Exhibit 16, Exhibit  
15 B, page three, and basically it says Lennox area, Perry  
16 and Grant Townships. And if you start with number one,  
17 beginning at the west center of Section 19, Range 51 West,  
18 Township 99 North. So you would find a map that would  
19 have -- we've got to have the Township 99 North, and we  
20 would have to have the Range 51 West. It's Perry Township  
21 and this is Section 19 of that township.

22 So it says beginning at the west center section,  
23 west center of the section, so west center of the section  
24 would be right there. Then it says go east to the center  
25 point of Section 19, township and range there again. And

1 you go east to the center point there. And then it says  
2 north along the half mile line to the one quarter, so we  
3 would go north one quarter of a mile.

4 And then it says east along the two, along the  
5 north quarter mile line to the half mile line of Section  
6 21, so we would go east two miles to this quarter mile  
7 line here, or half mile in.

8 Q. And that's safe to say that's a good example of  
9 how you read these maps and the legal descriptions in your  
10 work?

11 A. Yeah. You take the description, you put it on the  
12 map and you draw this in.

13 Q. Let's move on to Exhibit No. 11. Would you  
14 explain to the Commission what that is, please?

15 A. That's a map of Township Canton West. It's  
16 basically another map of shows the sections in that  
17 township and it's part of Exhibit B, page three, in the  
18 middle part of the page.

19 Q. And have you had an opportunity -- can you show us  
20 now how you would read, for instance, a piece of that map?

21 A. Okay. If you would take Exhibit B, page three,  
22 down in the middle here where it says Canton area and  
23 Canton township and it starts again with number one. It  
24 says beginning at the state line on the north quarter mile  
25 line of Section 25, Range 49, 98 north, so we got 98

1 north, 49, we got to find Section 25, which is right here,  
2 and this is the border line from the South Dakota and Iowa  
3 border. And it says one-fourth a mile from there. So  
4 that would be our starting point.

5 And then in number two it says west along that  
6 quarter of a mile line to the half mile line of Section  
7 26, Range 49 Township, so we would have to go from there  
8 to the half mile line of Section 26, and then it says  
9 south to the center point of Section 35, and so we would  
10 go south to the section point of 35 and then west along  
11 the half mile line to the one mile to the center point of  
12 section 34. So we go from that point and go one mile to  
13 the center point of Section 34, then north two miles to  
14 the center point and it carries on up to 22.

15 Q. Let's move on to Exhibit No. 12. Now, Mr. Chance,  
16 you have testified that you're familiar with Exhibit No.  
17 2, the contract and legal descriptions. And have you ever  
18 had any problem or conflict reading one of these legal  
19 descriptions?

20 A. No, I haven't.

21 Q. In your work with this contract have you ever run  
22 across the term centerline and center point and --

23 A. Yeah, we just went through centerline, center  
24 points.

25 Q. Yes?

1 A. Half mile lines.

2 Q. Yeah. Have you ever run into -- did that contract  
3 use the word a half mile line?

4 A. Yes, it does.

5 Q. And is that the term used throughout the contract?

6 A. Yes.

7 Q. Is it your view that that contract and the legal  
8 descriptions are very consistent throughout?

9 A. Yes.

10 Q. And the terminology is consistent?

11 A. Yes.

12 Q. And the terminology was notable to you?

13 A. Yes.

14 Q. Please explain to the Commission what this exhibit  
15 is.

16 A. This is what we took a normal section and we  
17 applied this dotted line, which would in the -- around  
18 here would pertain a normal section. And then we took  
19 Section 7 and implanted it into a normal section showing  
20 what Section 7 would like look into a normal section.

21 Q. Now, you used the word normal section. What is a  
22 normal section?

23 A. A normal section has got four quarters of equal  
24 balance. Usually each of those quarters have 160 acres in  
25 each quarter, equalling to 480 acres in a section.

1 Q. Now, you over --

2 COMMISSIONER SCHOENFELDER: How many acres in a  
3 section?

4 THE WITNESS: 480.

5 COMMISSIONER SCHOENFELDER: I think you're wrong,  
6 sir, I think it's 640.

7 THE WITNESS: Yeah, I'm sorry.

8 Q. If you did short your section, what would that be  
9 called?

10 A. Fractional section, or I call it a correctional  
11 section.

12 Q. Okay. Now, is that what we have in the numbers,  
13 the lower half of that?

14 A. Right. We're showing that this quarter is a full  
15 quarter, we have an 80. We also have in this here would  
16 be government lots, or if you want to call these four  
17 quarters around here like a normal section.

18 Q. Now, in your work experience have you ever been  
19 taught or learn how a correctional section would be  
20 surveyed?

21 A. Yes. I was told that they always started from the  
22 southeast corner and they work it out from there.

23 Q. Now, is that properly depicted here?

24 A. Yes.

25 Q. So from the bottom of that correctional section up

1 to that line that goes straight across, how far is that?

2 A. This should be one-half mile.

3 MR. CHRISTENSON: Okay. Okay. I have nothing  
4 further at this time.

5 MS. WIEST: Mr. Gerdes?

6 CROSS-EXAMINATION

7 BY MR. GERDES:

8 Q. Could you put Exhibit 9 back up, please? If it's  
9 all right, do you mind just staying there, Mr. Chance,  
10 since you are marking up those exhibits? I would like to  
11 ask you a little bit about them.

12 A. Okay.

13 Q. You identified Section 7 and outlined it in green  
14 there; correct?

15 A. Yes.

16 Q. And you identified for us the north centerline.  
17 Now, where is that again?

18 A. North centerline would be right there.

19 Q. Is it your testimony that the north centerline  
20 would be equidistant between the west and east boundary of  
21 that section?

22 A. Not equal distance.

23 Q. Why not?

24 A. Because this -- on this Section 7 it's not a full  
25 three-fourths of a mile long. It's less than

1 three-fourths of a mile long and less than a mile wide so  
2 it's not equal distance.

3 Q. So you're saying that the north centerline is that  
4 point between the second and third lot; is that correct?

5 A. Between the second and third government lots on  
6 the north side.

7 Q. And are you telling me that north centerline means  
8 that to a person reading a legal description that it  
9 starts at that point, according to your experience?

10 A. According to my experience, I would say yes.

11 Q. Now, you would agree with me, however, that if one  
12 were to draw a line equidistant between the Northern  
13 boundary and the southern boundary of Section 7, that line  
14 would be farther south than that east/west line that you  
15 drew there, would you not?

16 A. Equal distance from the north and south, is that  
17 what you're asking, or east and west?

18 Q. From between the north and south boundaries.

19 A. If you wanted an equal distance, you can tell that  
20 that's less than three-fourths of a mile long, so it would  
21 be a little ways further south, yes.

22 Q. Now, did you ever compare the manner in which the  
23 map, the Commission's map, was drawn to see whether or not  
24 that same east/west line was equidistant or on the half  
25 section line? Have you ever done that?

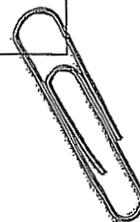
# Continuation

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1 A. You mean -- I don't understand your question.

2 Q. Well, I'll show you. Well, let me ask it this  
3 way: If you saw the Commission's map as blown up, Exhibit  
4 4, did you not?

5 A. Yes.

6 Q. Well, would you agree with me that if you drew a  
7 line on this map that was equidistant between the north  
8 and south boundaries of Exhibit 7, you would end up at the  
9 same place as where that line was originally drawn on the  
10 Commission's map, would you not?

11 A. If you wanted to draw a line on that section and  
12 make it equal distance, you would have to measure that  
13 section out and draw a line equal distance from there to  
14 there.

15 Q. Yeah, and it would look like this, would it not?

16 A. Basically, probably, maybe so.

17 Q. You heard the testimony, did you not, that that  
18 contract between the parties said that it's the map and  
19 not the descriptions that control, didn't you?

20 A. I read that. But on the top sentence of that it  
21 says if there is a conflict with the description.

22 Q. Didn't you just identify a conflict?

23 A. There's not a conflict, to me, with the  
24 description and the section.

25 Q. Okay. Now I'm showing you a blow-up of the map

1 that was actually attached to that contract, which is  
2 Exhibit 3. And, again, the equidistant line would  
3 coincide with the line on that exhibit as far as showing  
4 the boundaries between the two utilities, would it not?

5 A. If that's what you were using. If that was what  
6 you was using, an equidistant line.

7 Q. This was the map that was attached to the  
8 contract; right?

9 A. It was one of those maps.

10 Q. Okay. And so you're telling me we do have a  
11 discrepancy here then, do we not?

12 A. Not to my knowledge, we don't have a discrepancy.

13 Q. Aren't you saying that the line is here as it's  
14 been identified as West 61st Street?

15 A. I'm saying that it's defined on the half mile line  
16 and using center points.

17 Q. And you agree with me, will you not, that the half  
18 mile line is north from the line that is created if you  
19 draw a line equidistant from the north and south  
20 boundaries; isn't that correct?

21 A. The half mile line is a half mile from the  
22 southeast corner north.

23 Q. Right. If you put on a map it's north of a line  
24 that would be equidistant, would it not?

25 A. If that's, yeah, if it's equal distance, yes.

1 Q. Well, look at -- if you would put on your  
2 transparency for Exhibit 14, please. Now, isn't that the  
3 one that depicts the difference between using the half  
4 mile line as the boundary and the centerline, which is  
5 equidistant between the north and south boundary, doesn't  
6 that show the difference?

7 A. Okay. On this one here on 14, I would say if you  
8 want to take equal distance, if you took equal distance  
9 from one side to the other and you have drawn your cross  
10 hairs would be that would be where the cross hairs would  
11 fall.

12 Q. There's also a correction to the east, isn't  
13 there?

14 A. There's no correction to the east.

15 Q. Because you've got lots over to the west boundary  
16 of that section, don't you?

17 A. The correction is made on the west side here. And  
18 so this moves that line further to the east.

19 Q. Moves it further to the east and further to the  
20 south; right?

21 A. Yes.

22 Q. The boundary?

23 A. If you're using equal distance.

24 Q. Yeah. And you would agree with me, wouldn't you,  
25 that that map that was attached to the contract put the

1 line where the red line is on that exhibit, not on the  
2 half mile line?

3 A. The map should show, in reading the description  
4 should show right here this being the center point and  
5 going across.

6 Q. But it didn't, did it?

7 A. Well, I think that's what it does. It shows that  
8 point there and going across.

9 Q. Okay.

10 A. I have no problems of using that map or using this  
11 description.

12 Q. Well, then is Exhibit 3 wrong?

13 A. That exhibit there that you're showing to me, it's  
14 showing that at being at the half mile line, which on this  
15 picture here would be right here.

16 Q. West 61st Street is at the half mile line?

17 A. Right, it would be there.

18 Q. And this line which was on the original map is  
19 where your red line is on Exhibit 14, isn't it?

20 A. No, it's right here, it's right here. Just like  
21 if we read through any of these other sections, it would  
22 be right there. That's where that line dictates on this  
23 section.

24 Q. Look at this map. Isn't there a line drawn right  
25 here at the point equidistant from top to bottom?

1           A.    I don't know if that's equal distance or not.  I  
2 don't know if that's scaled.

3           Q.    Excuse me?

4           A.    I don't know if that's scaled out that way.

5           Q.    You didn't do that?

6           A.    No.

7           Q.    But you would agree with me that on Exhibit 3  
8 there is a line intending to depict the boundary between  
9 Southeastern and Xcel that is blow the half section line,  
10 wouldn't you?

11          A.    If you drew this, drew that on this section, that  
12 half mile line would be right here.  It would not be here.

13          Q.    Now, I'm saying look at this map.  Are you looking  
14 at the map, Exhibit 3?

15          A.    I'm looking at that map.

16          Q.    Is there a line?

17          A.    Yes.

18          Q.    Drawn blow the half mile line on that map?

19          A.    Looking at that map, you cannot tell me where the  
20 half mile line is.  Only way I can tell where you that  
21 half mile ends is putting it onto a section showing where  
22 that half mile line is.  So using a section that's showing  
23 that half mile line, that line is drawn right here across  
24 this half mile line because that's --

25          Q.    Do you want to get a scale and measure it and

1 we'll see what's half equidistant from top to bottom?

2 Should we do that?

3 A. You were asking me for the half mile line, not the  
4 equal distance line. Now, the equal distance line would  
5 be this line down here, which I don't know where is on  
6 that map.

7 Q. Let's go back to where we started. There is a  
8 line drawn here, is there not?

9 A. Yes, there is.

10 Q. Okay. Now, do you want to get a scale and we'll  
11 see if that's the equidistant line?

12 A. No. According to Exhibit B it says it's a half  
13 mile line, so according to the Exhibit B on the half mile  
14 line it would be right here because you have to read the  
15 map with the description and determining where the map is.

16 Q. The contract says that the map controls, does it  
17 not?

18 A. If there is a conflict with the description.

19 MR. GERDES: That's all I have.

20 MS. WIEST: Ms. Cremer?

21 MS. CREMER: I don't have anything.

22 MS. WIEST: Commissioners?

23 COMMISSIONER SCHOENFELDER: I have a couple and  
24 they're just sort of general. I want to know if I read  
25 this right, you're operations manager; is that right?

1 THE WITNESS: Yeah.

2 COMMISSIONER SCHOENFELDER: Can you tell me if  
3 Southeastern has any facilities at all in the disputed  
4 area?

5 THE WITNESS: No, we have no --

6 COMMISSIONER SCHOENFELDER: You can't tell me or  
7 you don't have any?

8 THE WITNESS: No, we don't have any no facilities  
9 in that area now.

10 COMMISSIONER SCHOENFELDER: And then, you know,  
11 all the maps show 160 acres. I think that if you  
12 accurately follow a legal description, you know that there  
13 never is exactly 160 acres in any quarter section and it  
14 always, all legal descriptions, say more or less.

15 THE WITNESS: Yes, they do. But you have to use  
16 the description as the section and then you determine  
17 where those lines are by original survey.

18 COMMISSIONER SCHOENFELDER: I think the original  
19 survey -- but as I read this maybe you can help me just a  
20 little bit. I'll go back to 9, which is the original  
21 government survey, and tell me if I'm reading this  
22 correctly. And I'm not sure of who did this survey or  
23 that -- this stuff I'm used to reading. It's original  
24 government survey, I think it's saying 439.26. Is this  
25 that section, am I right?

1 THE WITNESS: I believe that's -- I guess you  
2 would have to ask the surveyor.

3 COMMISSIONER SCHOENFELDER: That's my problem, the  
4 surveyor, I don't think, probably would be available for  
5 testimony.

6 THE WITNESS: Well, then I would say that's what  
7 he's telling us.

8 COMMISSIONER SCHOENFELDER: You're supposed to  
9 laugh.

10 THE WITNESS: I understand.

11 COMMISSIONER SCHOENFELDER: I want to know,  
12 though, I don't see any footage measurements on this  
13 government survey or on anything else that I'm looking at.  
14 I mean, I see some figures you have here. But even on the  
15 original maps that you say you're following, when there is  
16 usually -- when there are -- you know, I look -- I'm  
17 looking at this government survey and it looks to me like  
18 there's so many acres, but I can't say where it says how  
19 many feet this is from the center of the sections.

20 THE WITNESS: Okay. Well, a center of the section  
21 would be determined by that one quarter and that one  
22 quarter would be the footages.

23 COMMISSIONER SCHOENFELDER: I don't agree with  
24 that at all. I think you find the center of the section  
25 when you find the center of the section pin which was put

1 there by the original surveyor, and there's also section  
2 corners that you can find. And so do you ever look for  
3 those?

4 THE WITNESS: Yes.

5 COMMISSIONER SCHOENFELDER: Do you ever find them?

6 THE WITNESS: They're very hard to find. But I  
7 would say in most roads, in the middle of the roads if you  
8 would take your time and look, there's a little hole cut  
9 out, you might find a pin in there.

10 COMMISSIONER SCHOENFELDER: If there is a road on  
11 the quarter line.

12 THE WITNESS: Right.

13 COMMISSIONER SCHOENFELDER: But there's nothing --  
14 I mean I can see degrees and some acres, but I can't see  
15 any footage on any of these. And so I don't -- even on  
16 the maps that it appears to me that you're using to locate  
17 your territory because everyone knows that sections just  
18 aren't exactly all measured exactly the same distance.  
19 And every surveyor I've ever known measures a section,  
20 they shoot it differently. And so I don't see any feet on  
21 here.

22 THE WITNESS: I understand that. I don't see a  
23 lot of feet on this and on this other map I don't see a  
24 lot of feet on that one.

25 COMMISSIONER SCHOENFELDER: There's a lot left to

1 judgment here, a lot of just sort of guesswork.

2 THE WITNESS: Well, I guess when the letter was  
3 sent out back in '75, we had to take a map and draw our  
4 lines on it. On that map we drew the lines out as best we  
5 can and we also put with that a description on of what  
6 that line is supposed to tell you.

7 So you have to follow that description with the  
8 map. And then if you find irregular section where you're  
9 saying most sections are irregular, you still have to go  
10 by that description to find those points. And that's what  
11 we're doing, we're defining central points.

12 COMMISSIONER SCHOENFELDER: I don't know what  
13 exhibit this is, but this looks to me like it's your map  
14 that you use. And I think you told Mr. Gerdes you use  
15 that.

16 I'm looking up here where you've marked off your  
17 little corner, Exhibit 8. That looks to me like that is  
18 more or less a quarter of a section. And if you look at  
19 this one, that looks to me like it's attached to a  
20 contract, that's more or less a quarter of a section.

21 I don't see any footages. I don't see anything in  
22 there that tells me how far these lines are supposed to  
23 be. And you can defer to the legal description if you  
24 wish, which, by the way, I have a lot of experience with  
25 legal descriptions. That's a lousy one. It's a really

1 bad one. And I would have a heck of a time following it,  
2 but they don't have footages on them either.

3 So somebody agreed to something and perhaps didn't  
4 even know that those government lots were there. I mean,  
5 I think you might have been around when these agreements  
6 were signed.

7 THE WITNESS: Yeah, I was an apprentice back then,  
8 yes.

9 COMMISSIONER SCHOENFELDER: But do you know if  
10 anybody actually went out and measured anything off or  
11 they just marked maps?

12 THE WITNESS: I don't think they went out and  
13 measured anything. They marked the maps. They got  
14 together, a fellow from our company got together with a  
15 fellow of their company. They went out and they marked on  
16 the map, and when they marked on that map they wrote down  
17 this description.

18 Now, when the fellow taught me how to read this  
19 description, you have to read the description with the  
20 map. So you follow this description down and you follow  
21 that with the map. So then when you follow that with a  
22 map, you get out there and try to find some pins and get  
23 some measurements from there.

24 COMMISSIONER SCHOENFELDER: It would seem to me  
25 you would have already known there was a lot of

1 discrepancy between your legal description and the way the  
2 maps were marked. And I'm looking at two different maps  
3 that are marked the same way.

4 THE WITNESS: They use that legal description from  
5 page one and we're on to page four where they're saying  
6 there's a discrepancy. Now they use that same terminology  
7 from page one, and we used page three rather than the page  
8 four. So on that legal description I might have crossed  
9 some irregular sections, but it defined how they defined  
10 everything out and they defined it by taking a section and  
11 putting it across there and that's how they used it.

12 COMMISSIONER SCHOENFELDER: Well, I'm just having  
13 a lot of trouble trying to read a legal description into  
14 this when there are no measurements there. There really  
15 are no measurements there, especially back when these  
16 agreements were signed.

17 THE WITNESS: Okay. Only when the measurements  
18 get there is when a surveyor goes out and actually puts  
19 those pins in there that we can measure from.

20 COMMISSIONER SCHOENFELDER: That's all I have.

21 MS. WIEST: Any other questions? Any redirect?

22 MR. GERDES: Nothing further.

23 MS. WIEST: Thank you. Next witness.

24 MR. CHRISTENSON: We call Warren Fisk.  
25



1 the Board of Technical Professions for the state of South  
 2 Dakota. I've been on that board for fifteen and a half  
 3 years. As a member of that board I've also been active in  
 4 the National Council of Examiners for Engineering and  
 5 Surveying, who prepare the examination that South Dakota  
 6 uses in part to qualify surveyors, and I served on that  
 7 examination committee and chaired it.

8 Q. In your studies and education have you ever come  
 9 across the Manual of Surveying Instructions?

10 A. At the time I was going to the School of Mines  
 11 there was an earlier version of that manual in 1947. But,  
 12 yes, I am very familiar with it.

13 Q. Would you explain to the Commission what this book  
 14 is?

15 A. That is the manual of instructions that the  
 16 Department of Interior recognizes and also the state of  
 17 South Dakota, SDCL 43-18-6 refers that surveyors in South  
 18 Dakota will survey according to that manual.

19 Q. Does this manual instruct how to properly survey a  
 20 fractional section?

21 A. It does.

22 Q. Does it give guidelines on how to properly survey  
 23 a full section?

24 A. It does.

25 Q. I'll ask you now if you'll stand over by the

1 overhead and we'll put on what's been marked as Exhibit  
2 No. 9. Would you please explain what that exhibit is in  
3 your own mind?

4 A. It is the official government drawing of the  
5 township reflecting that the lines run and the  
6 measurements that were made. And as Tim Chance,  
7 Mr. Chance testified, the surveyor proceeds in the  
8 township from the south and from the east and the  
9 northwesterly section, normally six, but in this case  
10 seven is the one where the corrections are made in both  
11 directions north, south, east, west.

12 Q. Excuse me, is there a correctional township, or  
13 excuse me, a correctional section in this original  
14 government survey?

15 A. Yes, all of these are correctional sections across  
16 the north and the west sides.

17 Q. Okay. And the topic of our decision today is  
18 Section 7; is that correct?

19 A. That's correct.

20 Q. And where is that on this map, survey?

21 A. It's outlined in the green here. And the  
22 dimensions of that section are implied here as being 40  
23 chains, or a half a mile here. And my copy of this gives  
24 18.1 chains right here and gives 16.66 chains here. This  
25 one is a little difficult to read, but the outlines of

1 that section are dimensioned by original survey.

2 Q. Okay. So in your view would that take the  
3 guesswork out of what this means?

4 A. Absolutely.

5 Q. Now, would you explain to the Commission what the  
6 Manual of Surveying Instructions, the guidelines, are for  
7 properly surveying a fractional section?

8 A. Okay. And this section in particular, the rest of  
9 the township having been subdivided to this point, this  
10 line is continued north setting a monument at a half mile,  
11 or 40 chains, and then the excess or deficiency to the  
12 township line is noted.

13 Then they return to this line and this having  
14 already been set because it's a township exterior, they  
15 proceed to this one, half mile they make a mark, and they  
16 note the excess in deficiency. And then the manual  
17 further goes on to state that you so divide this to  
18 achieve as many regular-sized parcels, equal parts as are  
19 possible.

20 Q. And in your view has that been done here?

21 A. Yes.

22 Q. In your view, is there any doubt about the clarity  
23 of this description?

24 A. No.

25 Q. Okay. If we could, let's go to Exhibit 16.

1 MR. CHRISTENSON: If I may approach the witness?

2 MS. WIEST: Go ahead.

3 Q. Now, Mr. Fisk, I'll ask you to read the legal  
4 description. It would be on page four of Exhibit B. And  
5 if you could, guide us through how you would draw the  
6 lines in on the first three calls.

7 A. Okay. I would have to take these just as I pretty  
8 much first read this, beginning at the present north  
9 centerline of Section 7. And there was a question entered  
10 my mind, what do they mean by that north centerline  
11 knowing it was fractional, nearly 200 feet short in the  
12 east/west direction. Let me think about this further.

13 So it said south to the center point of Section 7.  
14 And I agree with some of the confusion between whether  
15 it's a geometric center point or a center one quarter as  
16 would be depicted here. And when I read the third call,  
17 east along the half mile line, this begins to clear things  
18 up. The only half mile line going east is this one here  
19 along the north line of this quarter section.

20 My uncertainties as to some of these meanings, I  
21 went elsewhere in the document to find try to find similar  
22 situations. And in almost all of them where the term  
23 center point is called is at the middle of section of a  
24 section, or the intersection of what you call the half  
25 mile lines.

1           Particularly, in one that was read earlier, in  
 2 Section 19 it began at the center of this line, went east  
 3 to the center point of Section 19. No one batted an eye  
 4 looking at their map, but this is also a fractional  
 5 section.

6           It then said go north on the half mile line. It's  
 7 this problem turned sideways. I say, hey, it's clear  
 8 here. I think it should be clear here. Follow the lines  
 9 of the original government survey.

10          Q. If we could move to Exhibit No. 12, please, could  
 11 you explain what that exhibit depicts?

12          A. As Mr. Chance talked a bit earlier, the dark  
 13 outline would be what a normal section would have been,  
 14 and the solid lines are what the section is because of the  
 15 constraints of another superior township to the north and  
 16 the eastern boundary the township we're talking about.

17          So we wind up with something that has been  
 18 foreshortened. However, the direction of this line and  
 19 the direction of this line are really laid out as if it  
 20 were a full section, and the center point of this center  
 21 one quarter, as we in survey terms would call it, falls  
 22 here.

23          Q. Now, what does the Manual of Surveying  
 24 Instructions, 1973, tell us on how to properly survey a  
 25 fractional section?

1           A.    Okay.  Again, beginning at this point, this line  
2 having been run and this line having been run by prior  
3 superior township calls, you have surveyed up to this  
4 point and the rest of your township dividing off as many  
5 square miles as you can.  You proceed a half a mile and  
6 then you go to the end of the township and note the  
7 difference, which is on this plat.

8           Then you return here, survey toward this marker,  
9 leaving a mark at a half mile.  Then to divide that you  
10 run a straight line from here to that marker.  You also  
11 run a straight line from here parallel to this line, and  
12 that would be your north quarter corner, and this would be  
13 the center one quarter even though it's not centered in  
14 the section.

15          Q.    Mr. Fisk, I'm going to show you what's been marked  
16 as Exhibit No. 4.  And on this now, on this exhibit, based  
17 on your experience and studies and education, where is the  
18 half mile mark on this Section 7?

19          A.    It would be the half mile mark would coincide with  
20 this northerly line here and more or less with this one.

21          Q.    Okay.  Now, is the half mile mark here, is it your  
22 testimony that would correspond to 61st Street?

23          A.    Yes.

24          Q.    Now, is this exhibit consistent with this exhibit  
25 and your interpretation where the half mile mark would be?

1 A. Where the half mile mark would be, yes, it is.

2 Q. Thank you. Now, it's my understanding you have  
3 reviewed the legal descriptions set forth in the contract  
4 in Exhibit 2 and Exhibit 16?

5 A. Yes.

6 Q. And are there any terms that stick out in your  
7 mind in these legal descriptions?

8 A. The terms most noticeable are the description of  
9 the lines, a half mile line, which you don't see anywhere  
10 in the blue surveyor's Bible. It's a quarter section  
11 line. The center point also does not appear in the  
12 surveyor's Bible. It's the center one quarter section  
13 corner.

14 Q. It's my understanding you were here to hear  
15 Mr. Chance's testimony?

16 A. Yes.

17 Q. Was there anything in his testimony that you  
18 disagree with?

19 A. No.

20 MR. CHRISTENSON: I have nothing further.

21 MS. WIEST: Mr. Gerdes?

22 CROSS-EXAMINATION

23 BY MR. GERDES:

24 Q. Mr. Fisk, you indicated some problem with the  
25 definition on the attachment to the contract, Exhibit 2,

1 as it related to -- I think you have in your hand page  
2 four of Exhibit 16; correct?

3 A. Yes.

4 Q. You indicated you had some problem with the term  
5 north centerline; is that correct?

6 A. There was some uncertainty there.

7 Q. That's not a surveying term, is it?

8 A. No, I would say that's not a surveying term.

9 Q. So it doesn't have meaning to you as a surveyor?  
10 You have to go someplace else to find meaning other than  
11 your jargon as a surveyor?

12 A. That's correct.

13 Q. And I think on the second subparagraph when we  
14 talk about the center point, again, you have indicated  
15 that that's not a term of art in surveying, would that be  
16 correct?

17 A. That's correct.

18 Q. So you had to rely -- you had to go someplace else  
19 to find meaning for that?

20 A. Yes.

21 Q. Would you agree with me that if you go through  
22 this entire description it's obvious it was not written by  
23 a surveyor?

24 A. Yes.

25 Q. Does it sound more like it was written by a lay

1 person trying to describe a map that was already drawn?

2 A. Quite possibly, yes.

3 Q. So one of the places you have to look to find  
4 meaning for these descriptions is the map itself, isn't  
5 it?

6 A. Or the document itself elsewhere.

7 Q. All right. So you agree with me as a surveyor you  
8 have to have a starting point?

9 A. Yes.

10 Q. And the starting point that you were given in this  
11 description that you and I just talked about the north  
12 centerline, you have to find that center point -- or,  
13 excuse me, that starting point before you could do  
14 anything else; correct?

15 A. That's correct.

16 Q. Okay. So if you don't get the correct starting  
17 point, then your survey is incorrect all the way along?

18 A. That's correct.

19 Q. So if a lay person were to understand the north  
20 centerline to mean that point equidistant between the east  
21 and west boundaries, that would not be the same starting  
22 point that you have identified; correct?

23 A. That's correct. That's why I had some  
24 uncertainty.

25 Q. And the same thing as far as the difference

1 between the center point of the section and the half mile  
2 line, those are two different concepts depending upon your  
3 understanding of what they're trying to describe here;  
4 correct?

5 A. That's correct.

6 Q. Going back again to Exhibit 3, would you agree  
7 with me that those two different concepts in terms of the  
8 north -- excuse me, the east/west lines which describe the  
9 north/south boundaries are exemplified by the two lines  
10 that are on this exhibit?

11 A. Yes, they're symbolic of those two differences.

12 Q. Okay. So if one were to be talking about that  
13 point which is equidistant between the north and the south  
14 boundary, one would arrive at a line that was  
15 approximately where this bottom line is, would that be  
16 correct?

17 A. Approximately.

18 Q. And if one were talking about the half section  
19 line as we've been talking about, or the quarter section  
20 line that you've been identifying it, one would then  
21 arrive at a line that was where this West 61st Street line  
22 is, would that be correct?

23 A. That's correct.

24 Q. Okay. Now, Exhibit 3 has been identified as the  
25 map that was attached to the contract Exhibit 2; correct?

1 A. Yes.

2 Q. As a part of your preparation for your testimony  
3 here, did you scale out this distance, these distances on  
4 this?

5 A. I scaled several distances on that map because it  
6 was not really conclusive in all of the calls. And I came  
7 to the conclusion if I really wanted to know what those  
8 lines meant, I had to go back to the document.

9 Q. The document meaning what, the description?

10 A. The description.

11 Q. Of course, the contract says that the map  
12 controls, not the description; right?

13 A. That's true.

14 Q. Okay.

15 A. But I would not be able to survey any of those  
16 lines in the right place by using a scale and then going  
17 out in the field because they don't even scale  
18 proportionately throughout the document. I would have one  
19 quarter mile 1,100 feet wide and another 1,500.

20 Q. I'll show you what has been marked as Exhibit 5.  
21 Have you seen that document?

22 A. Yes, I have.

23 Q. That's the overhead photo; correct?

24 A. Yes.

25 Q. Now, certainly there is a wide difference between

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that which has been described as the centerline and that which has been described as the line that goes through West 61st Street; correct? That's more than a couple hundred feet?

A. Oh, yes, that's closer to 773 feet, if I'm to believe the government numbers.

Q. Now, have you done any other work as it relates to what at one time was called the territorial law when it was adopted by the legislature and in turn implemented by this Commission in 1975?

A. I'm not sure I'm really familiar with those terms and what that might imply. I've done catastrophic work.

Q. Are you aware that the statute says that where there were existing lines the utilities were to go out and establish a boundary line equidistant between their lines? Are you familiar with that concept?

A. No, I'm not familiar with that.

Q. Let's just assume that the statute says that to establish those boundaries the two companies have to establish lines equidistant between their existing lines. Okay? Can we make that assumption for me?

A. Okay.

Q. Let's assume that back in 1975 that Xcel's lines were on West 57th Street. Okay? Can we make that assumption?

A. Okay.

Q. And then let's assume that Southeastern's lines  
were on 50th Street, okay?

A. Yeah, I'm with you.

Q. Where would the equidistant point be?

A. Halfway between those two.

Q. Right here, right?

A. That would appear to be so.

Q. Thank you.

MR. GERDES: No further questions.

MS. WIEST: Ms. Cremer?

CROSS-EXAMINATION

BY MS. CREMER:

Q. For those of us who aren't engineers or surveyors,  
how long is a chain?

A. 66 feet.

Q. Could you look at Exhibit 16? Do you have that in  
front of you?

A. Yes.

Q. Okay. And then I think it's about the third page,  
what I'm looking at -- look at number -- okay. And then if  
you could start on 102 right there, and then using Exhibit  
1, could you walk us through starting at 102 and walk us  
through how you would plot that?

A. Okay. First I have to find the township and

section we're referring to here. Do you want to put that map up on the projector so that I can --

Q. That would probably be the best way to do it.

A. I believe that Section 12 lies directly below Section 7 here. That's the normal progression of the townships; is that correct? And so the call leading up to --

MR. BETTMANN: We're over in a different --

A. This says 50 and 100 or are we 49 or 50?

Q. You're starting out Section 12. Section 102 is calling me Section 12, 50 and 100, and that's kind of consistent with the lines that are more or less shown here. The call leading to it is going across here and the call going away is running here.

Q. Then we were looking at the wrong thing so --

MR. BETTMANN: 49 is lops over here.

A. That's in agreement with that line right there.

MR. BETTMANN: It jumps here east one-half mile.

MR. CHRISTENSON: Perhaps you could show on the map exactly where you wanted to go.

MR. CREMER: We were looking at one line and apparently it's a different line. I think we've got two different -- Never mind, never mind, we'll pass.

A. Oh, Section 12 is here south quarter mile of Section 12 east along the --

MR. GERDES: Excuse me, I'm going to object. I thought the question was withdrawn.

MS. WIEST: Is there a question?

MS. CREMER: It's withdrawn.

MS. WIEST: Commissioners, do you have any questions?

COMMISSIONER NELSON: Not me.

COMMISSIONER SCHOENFELDER: Not me.

MS. WIEST: I just had a couple questions.

Mr. Fisk, at the beginning of your testimony I believe you were talking about the consistency of the legal descriptions. I believe that you use the words they were almost all of them were consistent. So did you find inconsistencies then?

THE WITNESS: No, I don't believe I did. The consistency, if we follow the government quarter section lines, is pretty true throughout. That's what led me to believe the references in Section 7 were referring to the government survey lines as opposed to a geometric.

MS. WIEST: So then I believe Mr. Gerdes asked you about whether you did any scale work, and then if you look at Exhibit 8, did you actually measure out the line there? Is that drawn on the map the horizontal line to scale it out?

THE WITNESS: Exhibit 8, the one that was just up

3 there? Yes I applied a scale to that and to some other  
4 lines that did not appear to be equal in the same, and I  
5 came to the conclusion that the width of the pen and  
6 whoever was drawing these the lines really weren't very  
7 consistent graphically to the point that they could have  
8 represented a ten-acre or a one sixty-fourth acre line,  
9 one sixty-fourth section line as opposed to a quarter  
10 section quarter mile line.

11 MS. WIEST: But then specifically for this Section  
12 7, when you did scale that out, was in fact that line  
13 equidistant?

14 THE WITNESS: I found it slightly to the north of  
15 center.

16 MS. WIEST: Slightly to the north of center?

17 THE WITNESS: Yes.

18 MS. WIEST: Okay. Thank you. Any other  
19 questions? Any redirect?

20 MR. CHRISTENSON: I just have one question, if I  
21 may. I just have a couple questions on this.

22 REDIRECT EXAMINATION

23 BY MR. CHRISTENSON:

24 Q. Now, based on your testimony today, it's my  
25 understanding that you put the half mile line on West 61st  
26 Street; is that correct?

27 A. That's correct.

1 Q. And would that be using all the standard surveying  
2 techniques as set forth in the manual we've been talking  
3 about?

4 A. That's correct. The term half mile line being  
5 used almost everywhere elsewhere as being the intersection  
6 of the center quarter, yes.

7 MR. CHRISTENSON: I have nothing further.

8 MS. WIEST: Any further cross?

9 MR. GERDES: No, Your Honor.

10 MR. WIEST: Thank you, Mr. Fisk. Any other

11 ~~rebuttal~~

12 MR. CHRISTENSON: No, Your Honor.

13 MS. WIEST: Did staff have any witnesses?

14 MS. CREMER: No.

15 MS. WIEST: Any rebuttal witnesses?

16 MR. GERDES: No, Your Honor.

17 MS. WIEST: Let's go off the record for a minute.

18 (DISCUSSION HELD OFF THE RECORD AT THIS TIME.)

19 MS. WIEST: The parties have agreed to the  
20 following briefing schedule: NSP has already filed a  
21 brief, therefore Southeastern has asked to file a brief on  
22 or before October 16th and NPS, Xcel, may reply to the  
23 brief on or before the 20th.

24 And at this point I would give an opportunity for  
25 any closing statements to be made by the parties.

Mr. Gerdes.

MR. GERDES: Members of the Commission, the purpose of this proceeding is simply to determine where the service areas lie. We've presented a photograph which depicts the service areas. Under the statutory procedure outlined in 49-34A-43 and 44, the service areas were agreed to and adopted by this Commission in 1975 and 1976.

The contract clearly says, and the statute -- the contract clearly says that the map is the one that governs as to what are the boundaries. I would submit that it's clear that the map that was attached to the contract depicts a midpoint between the north and south boundaries and that that was the intention of the parties at the time that they entered into that agreement.

Why else would they say that the map controls? The map was what they were working from. Somebody drew up the written description and then said, but by the way, if I showed up, look at the map, don't look at this description.

The Commission also adopted a map which establishes the official boundaries statutorily. Again, it's clear that what was intended to be depicted was a midpoint between the north and south boundaries. Exhibit 1 shows where that midpoint lies, and we believe that that shows where the boundaries of the two utilities lie.

Thank you.

MR. WINST: Mr. Christenson.

MR. CHRISTENSON: Thank you.

I would like to thank you for listening. It has been a lot of testimony today, and this is sometimes difficult stuff.

But the proposition that this isn't difficult, Mr. Chance, testified that he had worked for Southeastern for 27 years, and he added in 24 years he worked with this contract, he didn't have one wit of trouble interpreting that legal description.

I think it's also significant when the Commission makes its decision is that when Mr. Bettmann testified, his testimony was is that map really didn't do him any good. When Mr. Brinkman (sic) testified as well as Mr. Bettmann, each of those two took the exhibit and went down and they laid out the legal description, and each time it ended up on the West 61st Street. Yeah, they went looking a little bit, but there was not enough conflict in that legal description to state that you can't play it out, and each of them did.

Mr. Fisk testified that the Bible on surveying states that the line is 61st Street. So we have Mr. Bettmann going there, we have Mr. Brinkman (sic) going there, we have Mr. Fisk going there, and we have

1 Mr. Chance going there. Everybody who testified today had  
2 no difficulty reading that legal description and putting  
3 it on 61st Street.

4 My concern as a citizen and attorney for a rural  
5 co-op is that if you make this leap and you state that map  
6 has any legal significance whatsoever, I think that  
7 precedent will come back to haunt the Commission. I think  
8 you will have a hearing like this every week for the next  
9 ten years.

10 I don't know if there's any precedent, certainly  
11 none has been cited in Mr. Gerdes' brief, where you can  
12 rely on a map, which their own witness said meant nothing  
13 to him. So I think the precedent you're about to set,  
14 I think, is going to really be important.

15 Now, my suggestion is whenever there's a dispute  
16 like this, you call upon the regular standard, ordinary,  
17 time-proven ways to survey and that's in that book, and  
18 that's what Mr. Fisk testified to.

19 So that's my recommendation for the conclusion you  
20 can draw. There's no dispute about it. If you want to  
21 end the dispute, you rely on the normal practice of  
22 surveying, which was testified to here, and I think that  
23 will solve any future problem. So thank you.

24 MS. WIEST: Thank you. Ms. Cremer?

25 MS. CREMER: I have nothing.

MS. WIEST: One thing I did forget to mention, they did have the transcript of the hearing on that, I'm assuming, covered this area. Did anyone want this put into the record? I have not looked at it. All I'm saying it's 120 pages of transcript. I have no idea if this area was discussed.

MS. CREMER: It is in about a page and half a page.

MR. CHRISTENSON: I'll tell you what, I would like to look at it before I stipulate to that being part of it.

MS. CREMER: 14 and 15 are --

MS. WIEST: I'll get each one of you a copy, and if you could put in writing back to me whether you have any objection to this coming in, okay? I believe that's all for today. Thank you.

(The hearing concluded at 2:30 p.m.)

STATE OF SOUTH DAKOTA )  
COUNTY OF STANLEY ) :SS

IN CIRCUIT COURT  
SIXTH JUDICIAL CIRCUIT

I, Lori J. Grode, Registered Merit Reporter and Registered Professional Reporter and Notary Public in and for the State of South Dakota:

DO HEREBY CERTIFY that the above hearing pages 1 through 122, inclusive, was recorded stenographically by me and reduced to typewriting.

I FURTHER CERTIFY that the foregoing transcript of the said hearing is a true and correct transcript of the stenographic notes at the time and place specified hereinbefore.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office at Ft. Pierre, South Dakota, this 6th day of October, 2000.

Lori J. Grode  
Lori J. Grode, RMK/RPR  
Notary Public

PUBLIC  
UTILITY  
COMMISSION

OFFICIAL  
ELECTRIC  
TERRITORY

*See Also  
Docket EL98-016  
Docket EL99-013*

REA

NSP

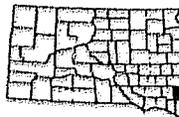
IPS

MUNI

GENERAL HIGHWAY MAP  
**LINCOLN COUNTY**  
SOUTH DAKOTA

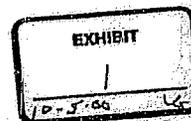
PREPARED BY THE  
SOUTH DAKOTA DEPARTMENT OF HIGHWAYS  
RESEARCH AND PLANNING DIVISION  
IN COOPERATION WITH THE  
U. S. DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION

SCALE  
1968

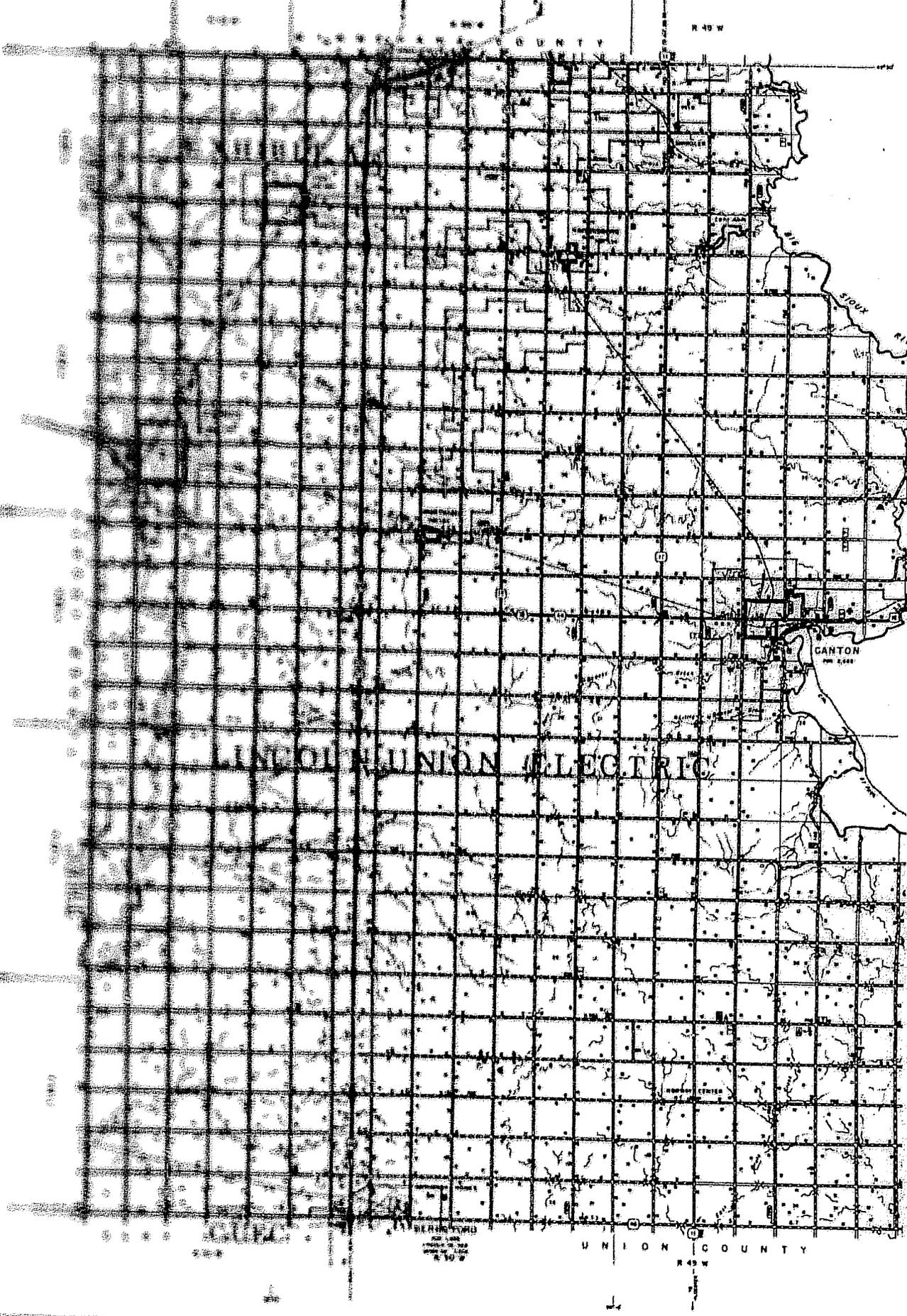


LAMBERT CONFORMAL CONIC PROJECTION

U. S. AND STATE NUMBERED HIGHWAYS AND  
THE FEDERAL-aid PRIMARY AND FEDERAL-aid  
SECONDARY SYSTEM AS OF DEC. 31, 1971



145



LINCOLN UNION ELECTRIC

CANTON  
POP. 5,000

UNION COUNTY

BERNARD  
POP. 1,000  
R. 10 W

HOWARD CENTER

CANTON RIVER

R. 45 W

R. 45 W

Scale bar and other small text

CONTRACT IN THE MATTER  
OF THE ESTABLISHMENT OF AN  
ASSIGNED SERVICE AREA

THIS CONTRACT, made this 22<sup>nd</sup> day of January, 1976, by  
and between CENTRAL STATES POWER COMPANY and LINCOLN-UNION  
ELECTRIC COMPANY, pursuant to SDCL 49-34A.

Recitals

The parties to this contract are each an "electric  
utility" as that term is defined in SDCL 49-34A-1(7).

Central States Power Company and Lincoln-Union Electric  
Company acknowledge that both electric utilities operate electric  
systems, portions of which lie in the same general geographical  
area and pursuant to SDCL 49-34A agree that it is in the public  
interest that such electric utilities shall negotiate designated  
service areas and customers to be served and have prepared a map  
attached hereto as Exhibit "A" to accurately and clearly show  
the boundaries of such areas of each electric utility.

The parties hereto further agree that it is in the public  
interest to eliminate or avoid unnecessary duplication of elec-  
tric utility facilities, to promote the efficient and economical  
development of the electric systems of the parties to  
this contract and to provide adequate electric service to all  
areas and customers affected.

The parties hereto further agree that when applicable,  
due consideration has been given to the conditions as set out  
in SDCL 49-34A-13 and SDCL 49-34A-14.

Each party to this contract specifically indicates its  
intent and good faith intent to provide adequate and de-  
terminable electric service in the area to be assigned.

It is the purpose of this writing to set forth certain

EXHIBIT

2

10-5-08

LG

14/6

terms attached which will serve to guide the parties hereto in their relationship to the designated service area as depicted by the prepared map attached hereto as Exhibit "A" and incorporated into this contract as a part hereof.

NOW, THEREFORE, the parties agree as follows:

That this contract provides for a mutually agreeable delineation of designated service area, for the area shown on Exhibit "A", involving distribution lines and does not involve transmission lines.

Exhibit "A", a map, clearly and accurately depicts the designated service area of each electric utility for the area shown in Exhibit "A".

It is understood and agreed by and between the parties herein that irrespective of and notwithstanding the territories shown upon by the parties hereto, each of the parties hereto shall have the exclusive right to continue providing electric service at retail to each and every location where it was serving a customer as of March 21, 1975.

This contract is made subject to all applicable rules, regulations, and orders, now or hereafter in force, of said South Dakota Public Utilities Commission.

Each person signing this contract warrants that he has the proper authority to bind his respective corporation.

It is mutually agreed and understood between the parties that this contract is not binding upon either of the parties to the contract until the contract has been approved in its present form by the South Dakota Public Utilities Commission.

It is mutually understood and agreed by and between the parties submitting this map, Exhibit "A", pursuant to SDCL 49-22-44 that the descriptions, Exhibit "B", which are attached

in the map and the accompanying text there is any conflict between the written description of areas and the map submitted. In each instance where there is a conflict between the map, Exhibit "A", and the written description, the map shall in all respects be the authoritative basis of the assigned service area of each utility.

It is further understood and agreed by and between the parties hereto that nothing in this contract shall be construed to deprive or set aside existing franchises or either of the parties to this contract, and it is further understood that notwithstanding any terms or provisions of this contract, either of the parties to this contract may extend electric lines for electric service to its own utility property and facilities as is allowed by SDCL 49-34A-57.

It is further understood and agreed by and between the parties to this contract that neither of the parties to this contract shall have any right to new customers as a result of the provisions of SDCL 49-34A-56.

It is further understood and agreed by and between the parties to this contract that this contract shall not in any way deny or diminish the right that each of the parties to this contract has under SDCL 49-34A-42 to, as an electric utility, extend its facilities through the assigned service area of another electric utility if the extension is necessary to facilitate the electric utility connecting its facilities or customers within the assigned service area.

This contract will be submitted to the Public Utilities Commission for approval and that the territories agreed upon by the parties hereto will become the exclusive and sole territories of the respective parties following approval by the Public Utilities Commission pursuant to SDCL 49-34A-43.

ENTERED AT Sioux Falls, South Dakota, this 29  
day of January, 1978.

**SIOUX FALLS ELECTRIC COMPANY**  
Thomas A. Hall  
Thomas A. Hall  
Its Manager

**NORTHERN STATES POWER COMPANY**  
BY Darrell D. Butterwick  
Darrell D. Butterwick  
General Manager  
Sioux Falls Division

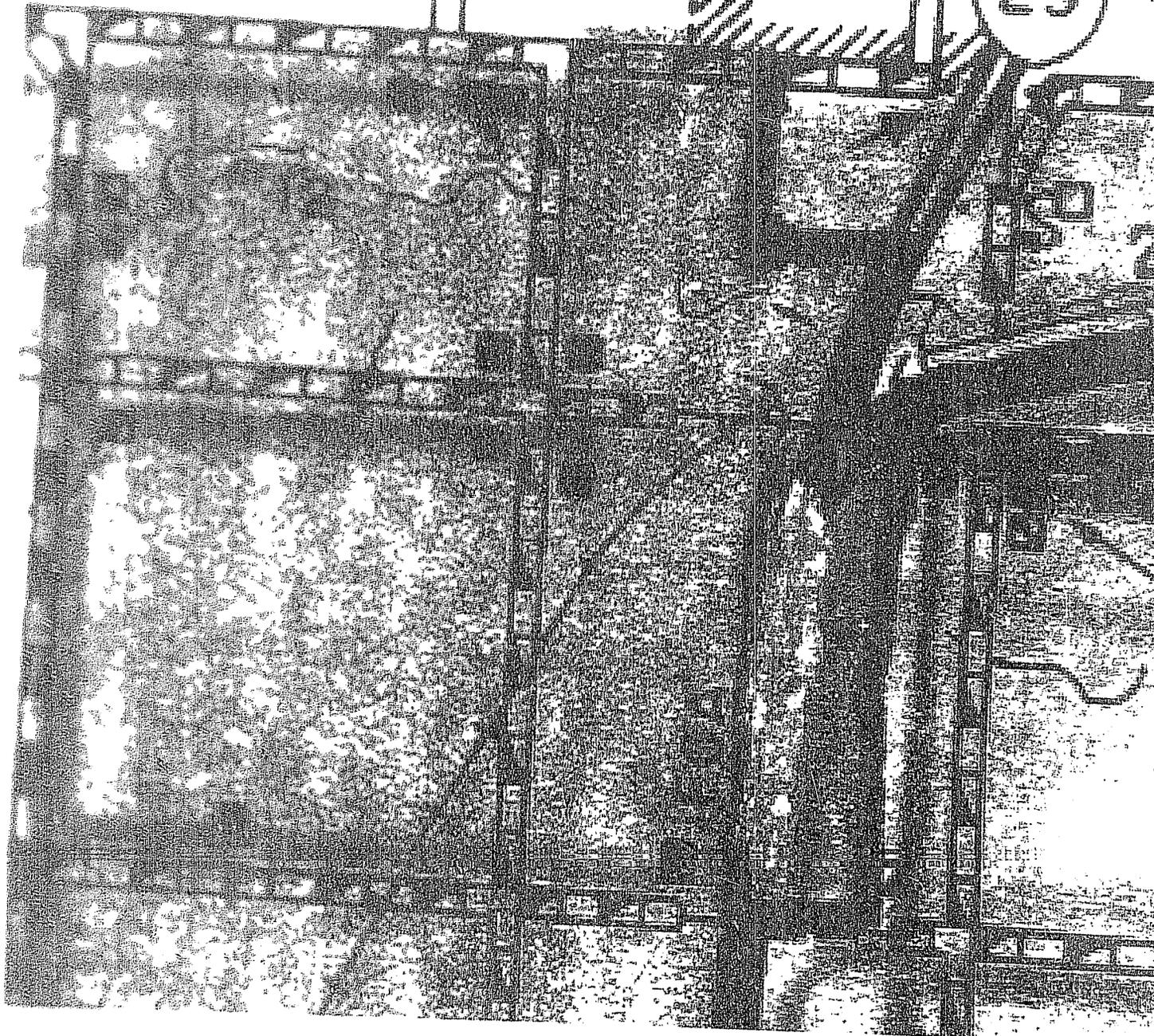
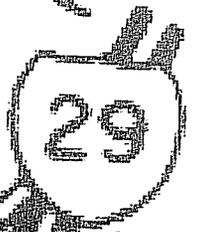
ATTEST:  
C. J. [Signature]  
Witness

ATTEST:  
Samuel Johnson  
Witness

These lines is description of electric service area boundaries agreed upon by Lincoln-Wise Electric Company and Northern States Power Company and as shown on the attached General Highway Map of Lincoln County, South Dakota:

1. Beginning at the north center line of section 7, R50W, T100N.
2. Then south to the center point of section 7, R50W, T100N.
3. Then east along the half mile line to the center of I29 in section 7, R50W, T100N.
4. Then south along center of I29 to Junction of Highway 229 in section 18, R50W, T100N.
5. Then northwest along Highway 229 to the section line between sections 8 and 9, R50W, T100N.
6. Then south along the section line to the north quarter mile line between sections 16 and 17, R50W, T100N.
7. Then east along quarter mile line to the west quarter mile line of section 16, R50W, T100N.
8. Then south along the west quarter mile line one-half mile to the south quarter mile line of section 16, R50W, T100N.
9. Then west along the south quarter mile line to the half mile line of section 17, R50W, T100N.
10. Then north along the half mile line to the north section line of section 17, R50W, T100N.
11. Then west along section line to the east quarter mile line of section 18, R50W, T100N.
12. Then south along the east quarter mile line to south section line of section 18, R50W, T100N.
13. Then west along the section line to the center of I29.
14. Then south on I29 to the south quarter mile line in section 19, R50W, T100N.
15. Then east along the south quarter mile line to the east quarter mile line of section 19, R50W, T100N.
16. Then south along the quarter mile line to the north quarter mile line of section 30, R50W, T100N.
17. Then west along the north quarter mile line to the center of I29 in section 30, R50W, T100N.
18. Then south along the center of I29 to the south quarter mile line of section 30, R50W, T100N.
19. Then west along the south quarter mile line to the west quarter mile line of section 25, R51W, T100N.
20. Then south along the west quarter mile line to the south section line of section 25, R51W, T100N.
21. Then west to the northwest corner of section 25, R51W, T100N.
22. Then north along the section line one-half mile to the east center of section 26, R51W, T100N.
23. Then west along the half mile line to the west quarter mile line of section 26, R51W, T100N.
24. Then north along the west quarter mile line to the north quarter mile line in section 26, R51W, T100N.
25. Then west along the north quarter mile line to the half mile line of section 27, R51W, T100N.
26. Then south along the half mile line to the center point of section 34, R51W, T100N.
27. Then east one-half mile to the east section line of section 34, R51W, T100N.
28. Then north along the section line to the northeast corner of section 34, R51W, T100N.
29. Then east along the section line one-eighth mile.

T N N E

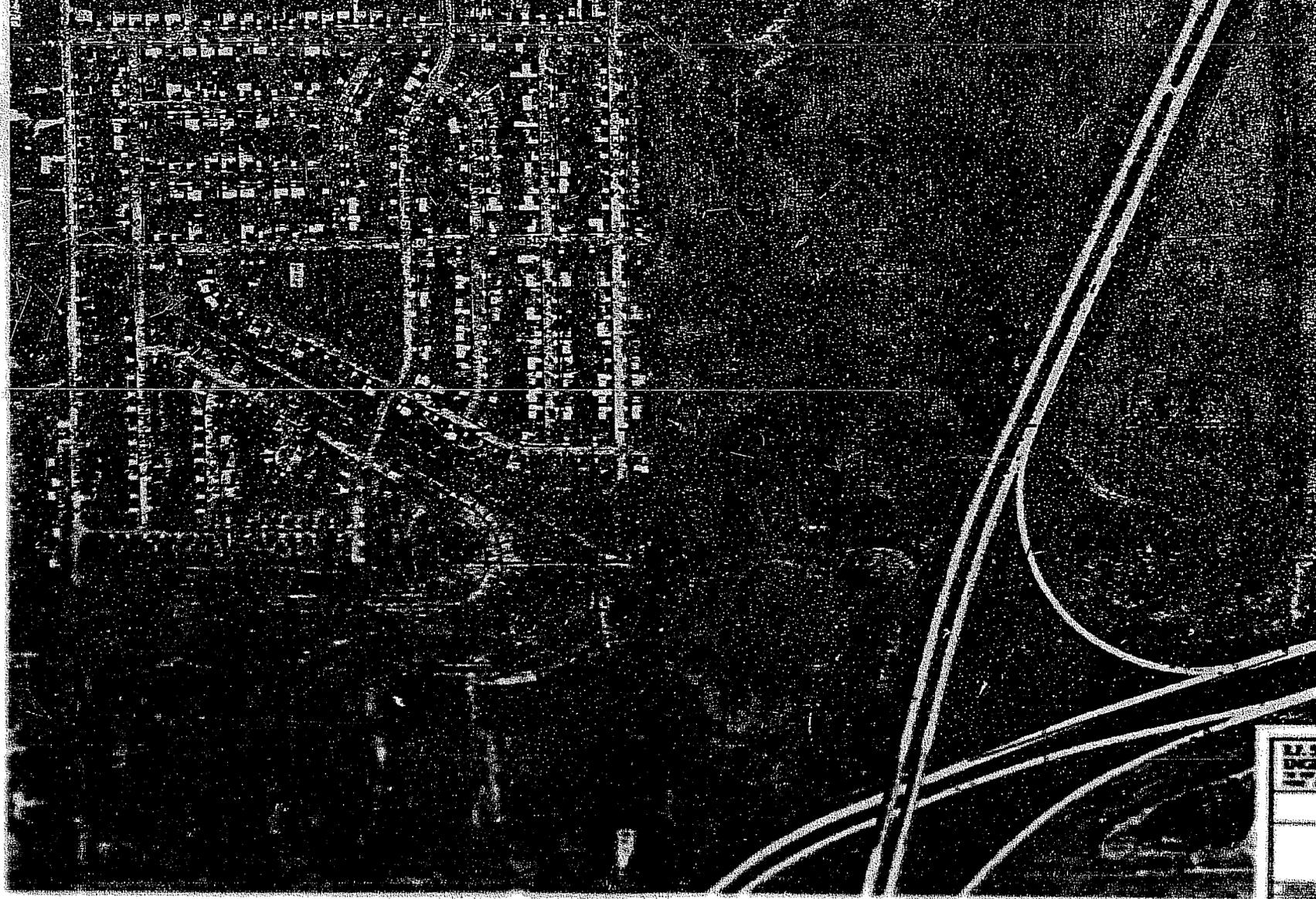


1.51

# CONTINUATION

3

-



GRAPHIC SCALE



(IN FEET)

*Exhibit 5*

**L.F. SAUER & ASSOCIATES**  
**ENGINEERS & SURVEYORS**  
1000 W. 10th Street, Suite 100  
Denver, Colorado 80202



PREPARED FOR

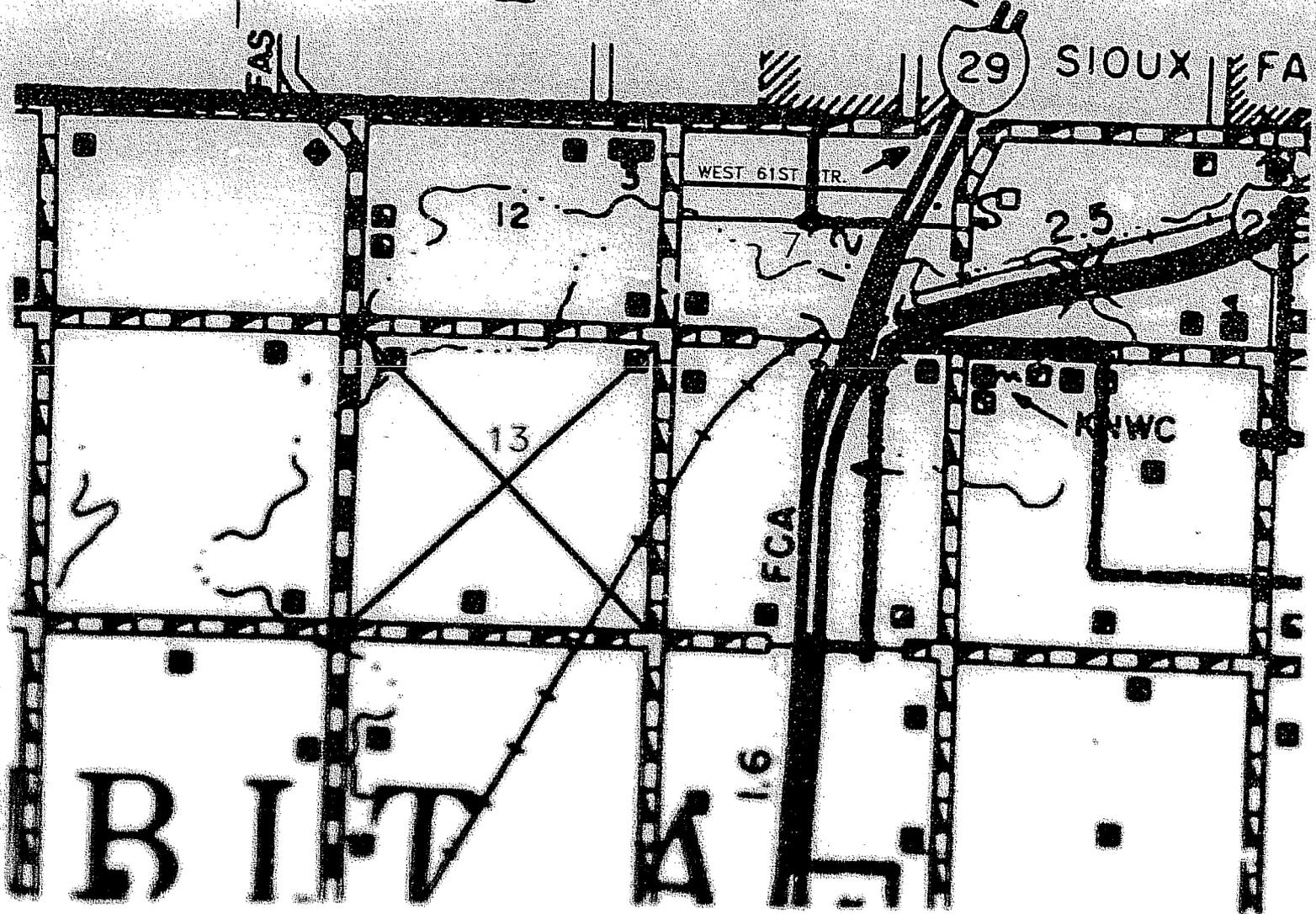
**THE CITY**

DENVER

PROJECT: 1. 10th AVE.  
FROM 10th STREET TO 10th AVE.

150

M I A N N E A H A



B I T A

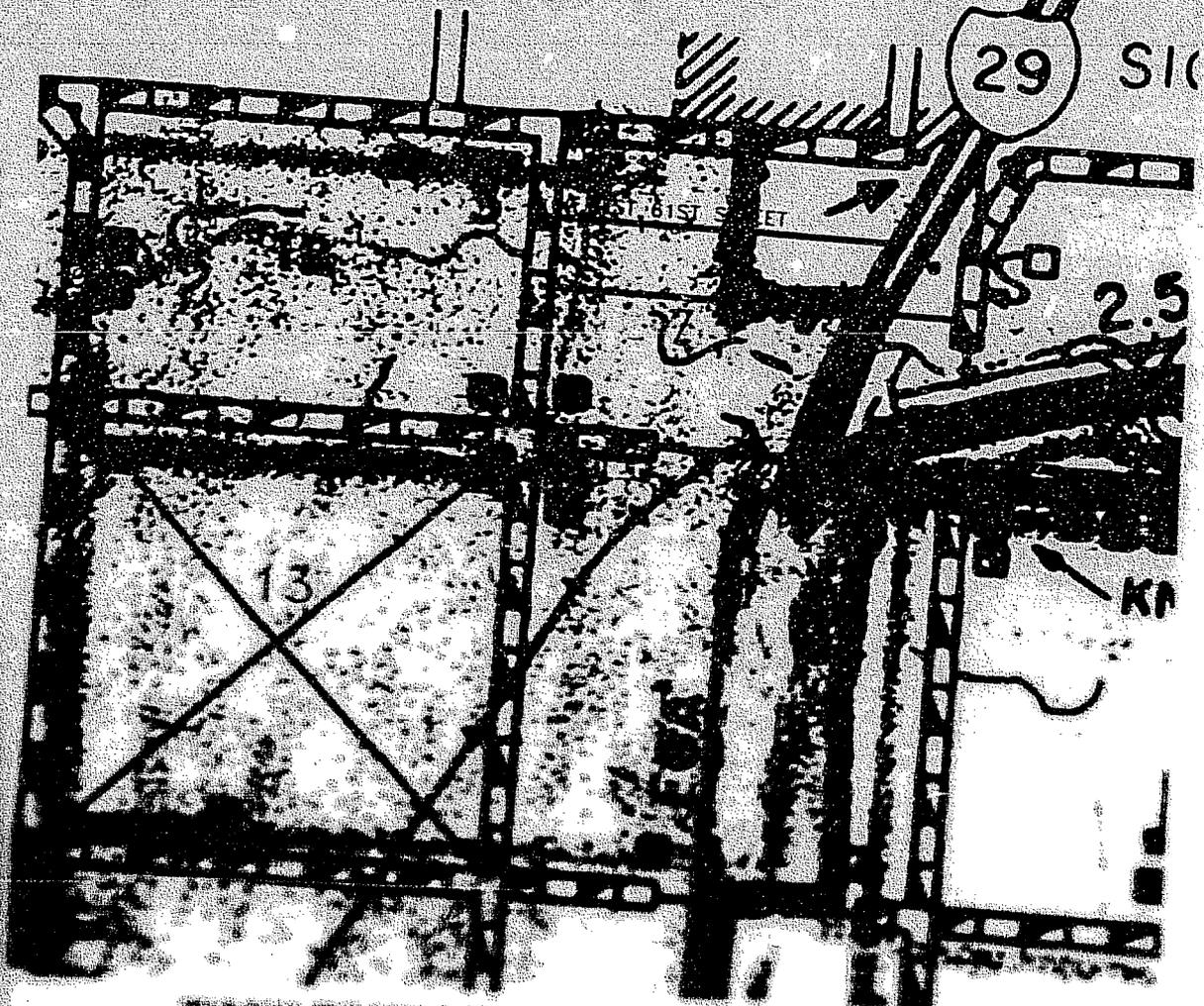
THROW 150W LINCOLN CO., SOUTH DAKOTA

S. F. LARSON & ASSOCIATES  
 ENGINEERS & ARCHITECTS  
 1001 14TH ST.  
 LINCOLN, S. D. 57104  
 (405) 461-1111

I N N E A H

29

SIK



TIDOW R50W LINCOLN CO., SOUTH DAKOTA

PLAN

BY: [Signature]

DATE: [Date]

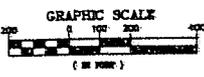
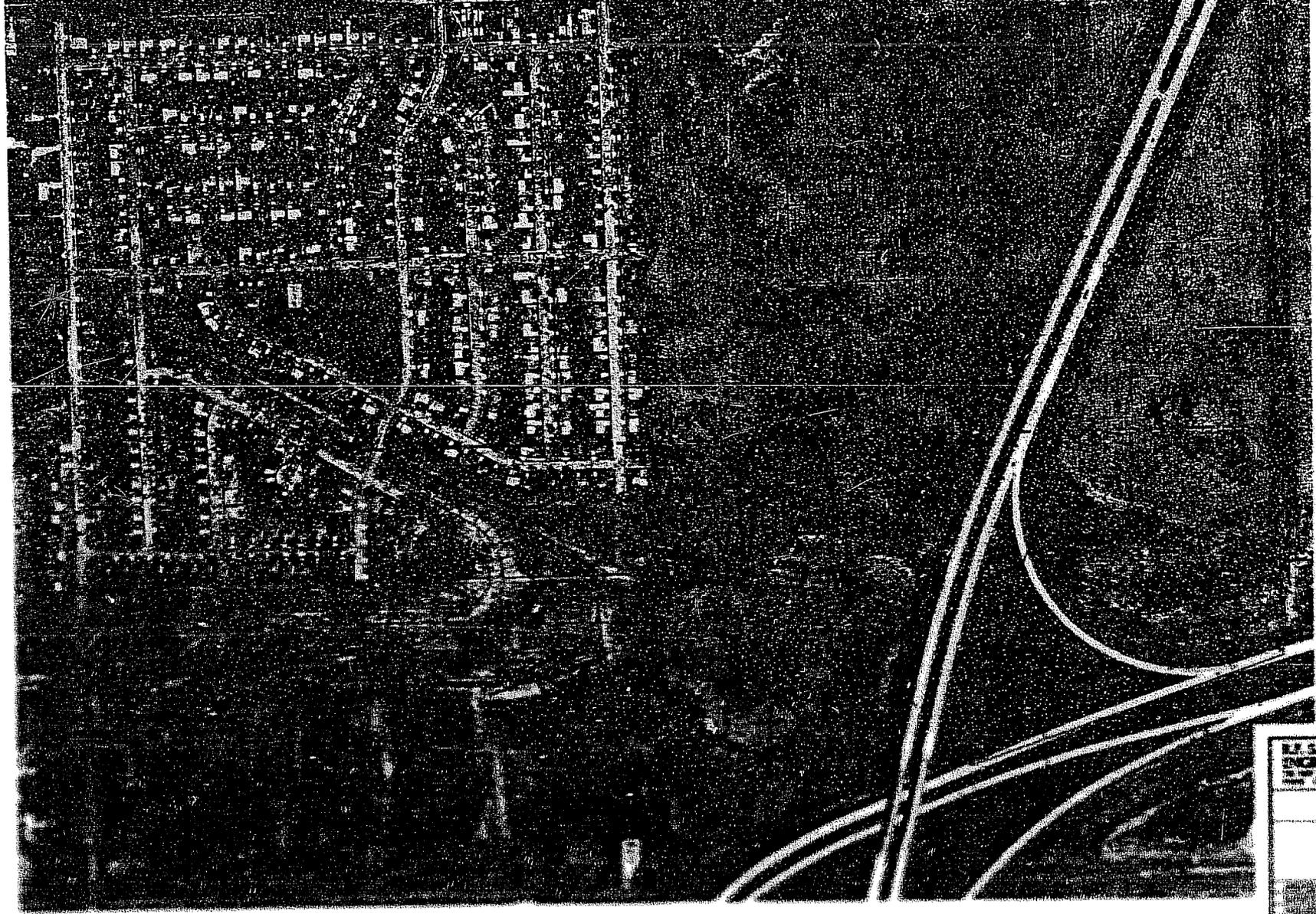
SCALE: [Scale]

PROJECT: [Project Name]

# CONTINUATION

3

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*Exhibit 5*

<b>R.J. SAYRE &amp; ASSOCIATES</b> <b>ENGINEERS &amp; SURVEYORS</b> <small>100 WEST 10TH STREET, SUITE 1000, DENVER, COLORADO 80202</small>	
<b>SCALE SHEET</b> <b>RESUBMITTAL</b>	
PROJECT: [REDACTED]	
DATE: [REDACTED]	

1-1-66

M I N N E A P O L I S

SIoux FA



WEST 61ST TR

12

25

13

KNWC

FCA

1.6

BIT

T100W R50W LINCOLN CO., SOUTH DAKOTA



*5/11/74*

**R.F. SAYRE & ASSOCIATES**  
ENGINEERS & SURVEYORS

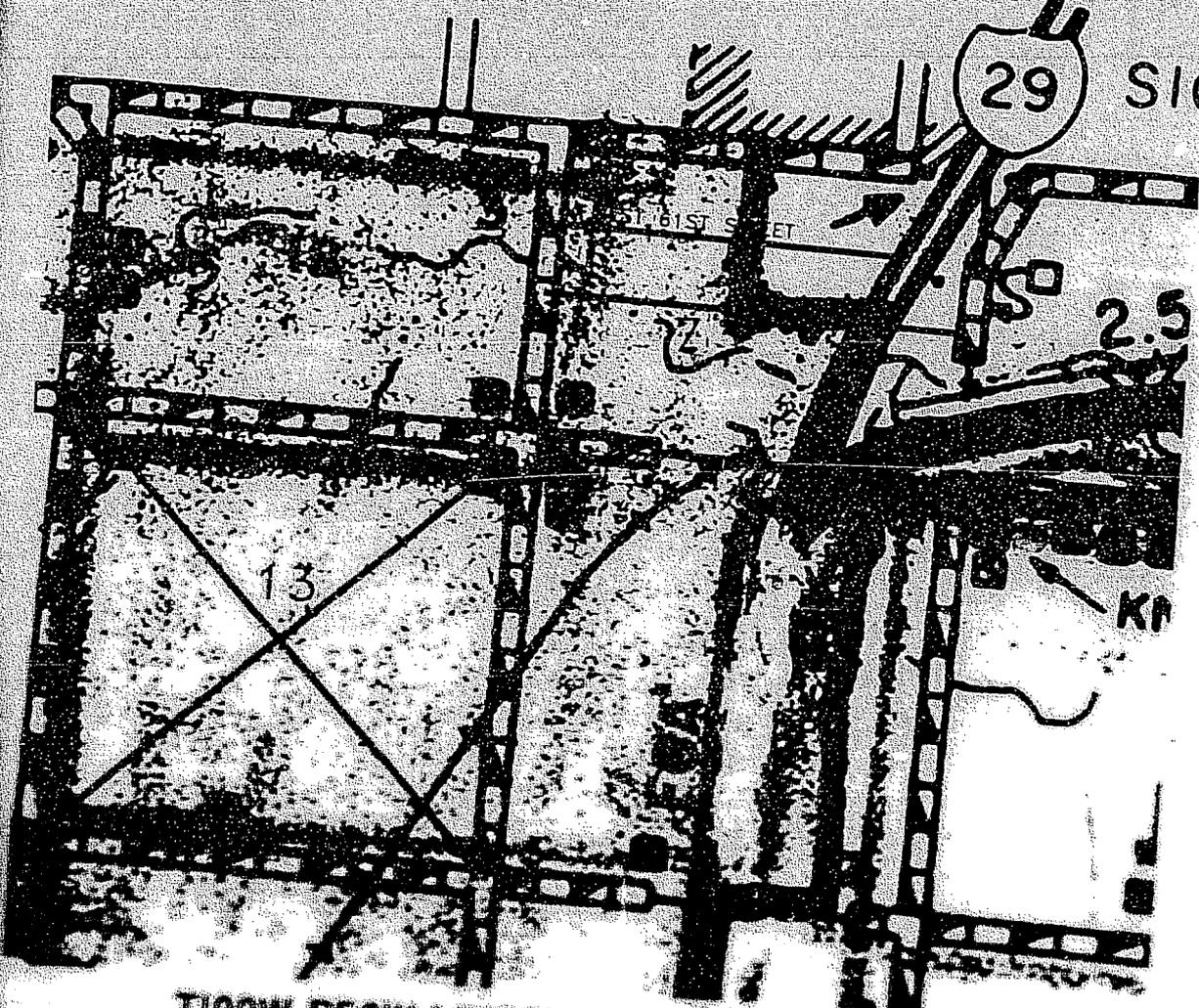
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ICE ENERGY

---

SECTION 11, T100W, R50W,  
LINCOLN COUNTY, S.D.

1  
N N E A H  
SIC



T100W R50W LINCOLN CO., SOUTH DAKOTA

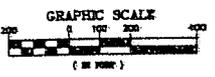
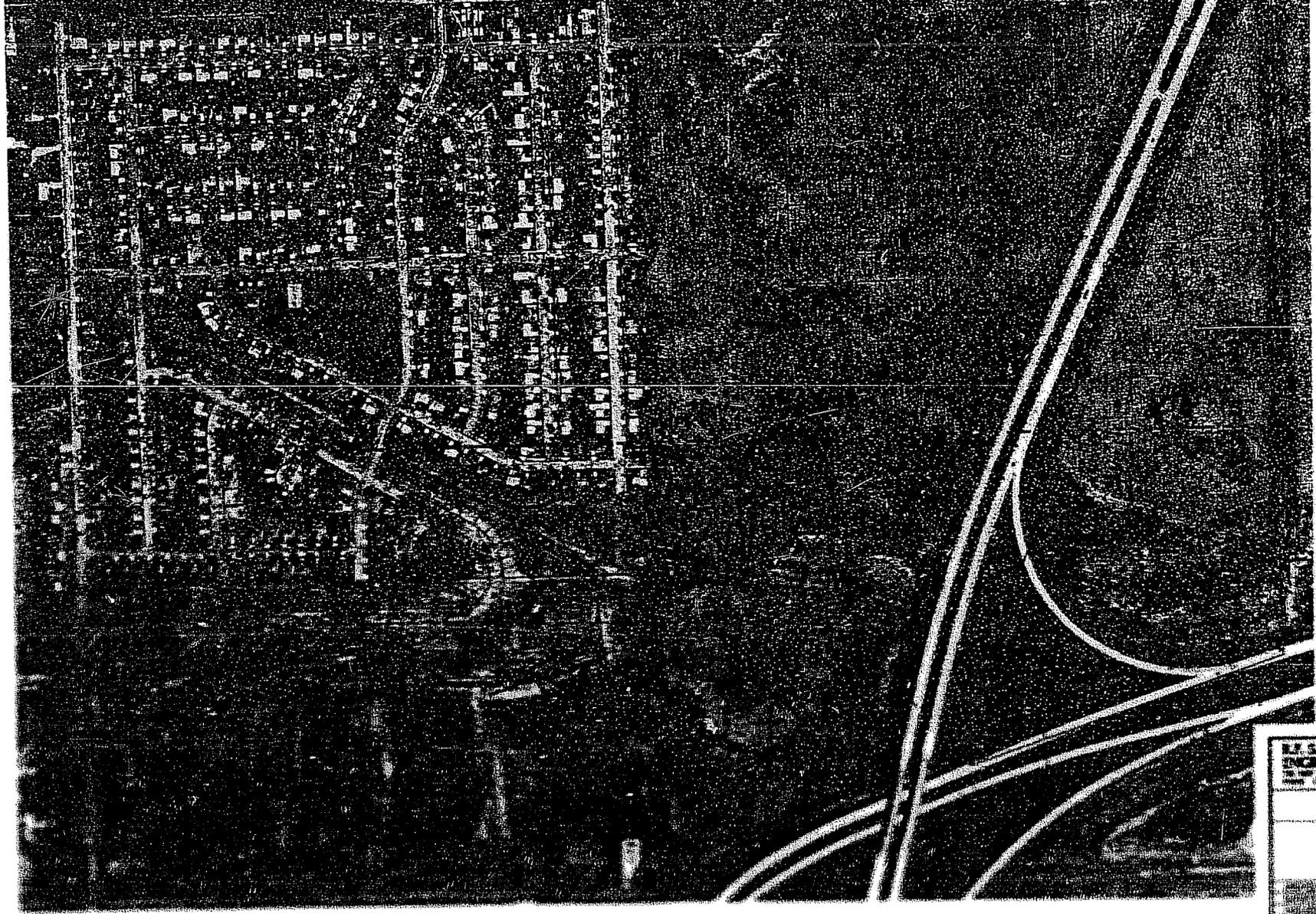
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<b>R.F. SAYRE &amp; ASSOCIATES</b> ENGINEERS & SURVEYORS
<b>ICE SHEET</b>
DATE: _____
PROJECT: _____

# CONTINUATION

3

\_\_\_\_\_ -



*Exhibit 5*

<b>R.J. SAYRE &amp; ASSOCIATES</b> <b>ENGINEERS &amp; SURVEYORS</b> <small>100 WEST 10TH STREET, SUITE 1000, DENVER, COLORADO 80202</small>	
<b>SCALE SHEET</b> <b>RESUBMITTAL</b>	
PROJECT: <b>100TH STREET</b>	
DATE: <b>10/10/08</b>	

100

M I N N E S O T A

FAS



SIoux FA

WEST 61ST TR

12

25

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KNWC

FCA

1.6

BIT

T100W R50W LINCOLN CO., SOUTH DAKOTA



*5-11-74*

**R.F. SAYRE & ASSOCIATES**  
ENGINEERS & SURVEYORS

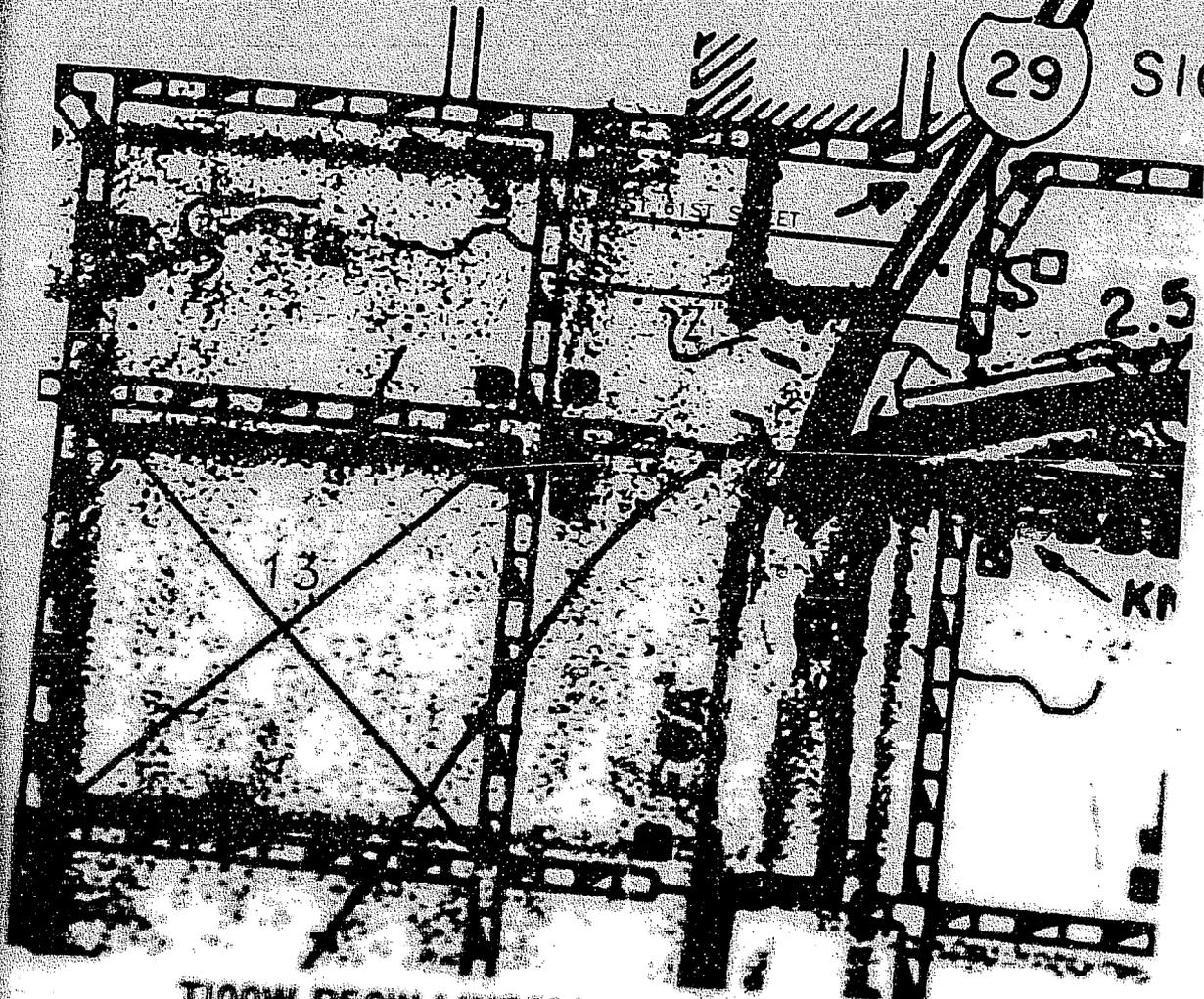
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ICE ENERGY

---

SECTION 11, T100W, R50W,  
LINCOLN COUNTY, S.D.

1  
△ N N E A H  
/



T100W R50W LINCOLN CO., SOUTH DAKOTA

*FILED*

<b>R.F. SAYRE &amp; ASSOCIATES</b> ENGINEERS & SURVEYORS
<b>ICE SHEET</b>
DATE: _____
PROJECT: _____

Continuation

#

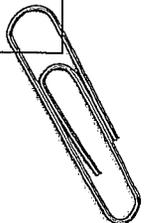
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# of pages



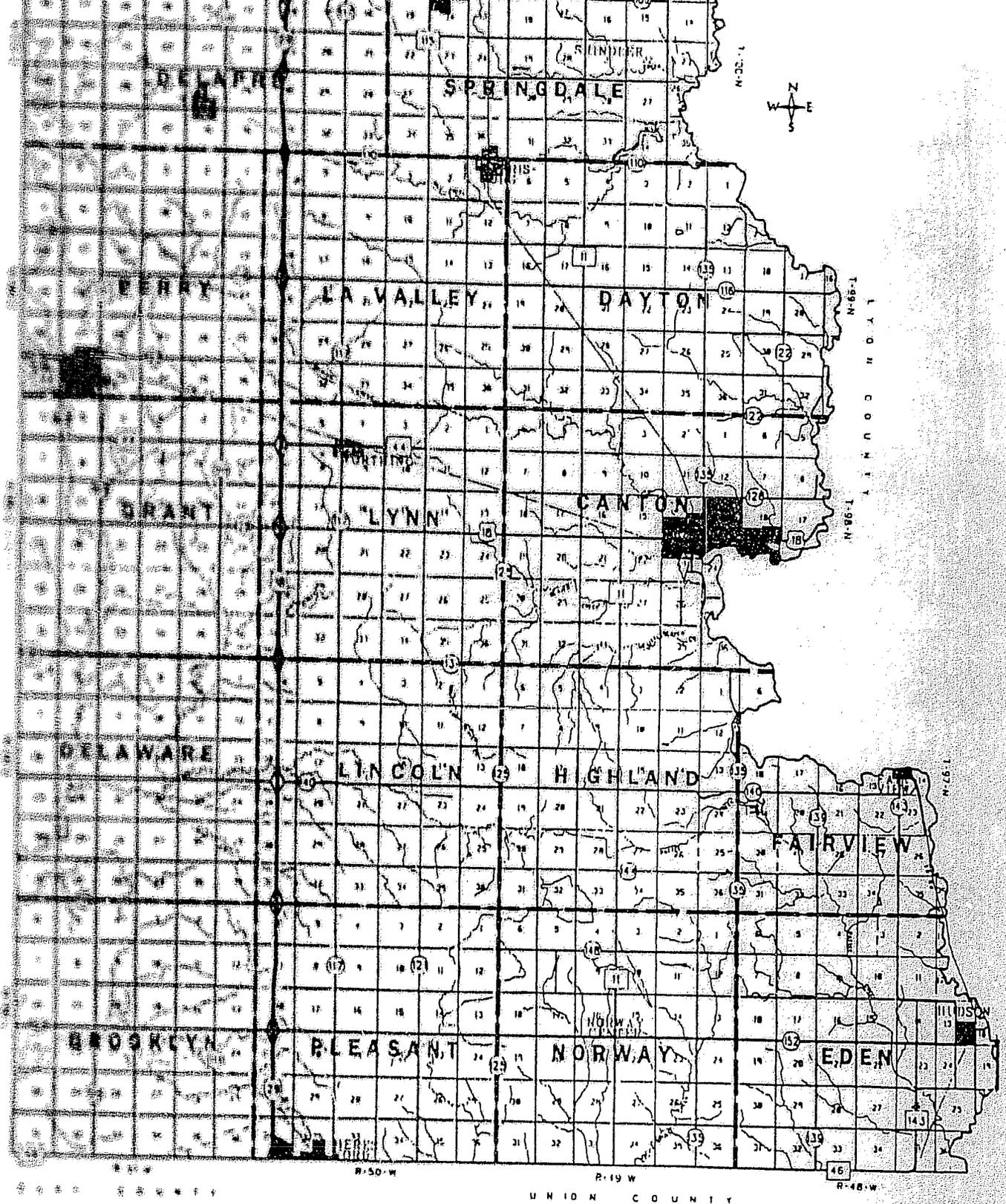
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**END**

**OF**

**RETAKE**



# Lincoln County, South Dakota

EXHIBIT  
 6  
 16-5-06 LG

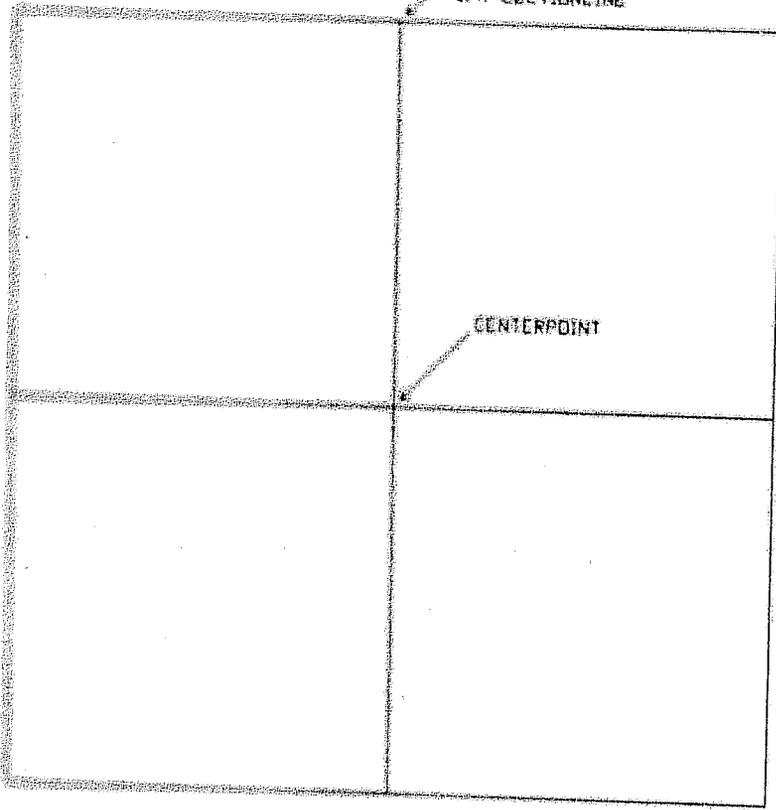
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2

COUNTY MAP

# NORMAL SECTION

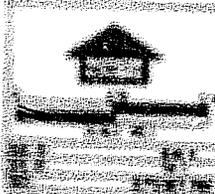
- CENTERLINE
- HALF MILE LINE
- 1/4 SECTIONLINE



- CENTERLINE
- HALF MILE LINE
- 1/4 SECTIONLINE

# NORTH / WEST CORRECTIONAL SECTION

4	3	2	1
5	80 160		
6			



DATE	REVISIONS AND PURPOSE

**SOUTHEASTERN ELECTRIC COOPERATIVE, INC.**  
 A Touchstone Energy® Cooperative

**WARREN OFFICE**  
 PO Box 388  
 501 South Broadway Avenue  
 Marion, South Dakota 57043-0388  
 Telephone: 605-648-3518  
 Fax: 605-648-3778  
 E-mail: sec@sunrise.net

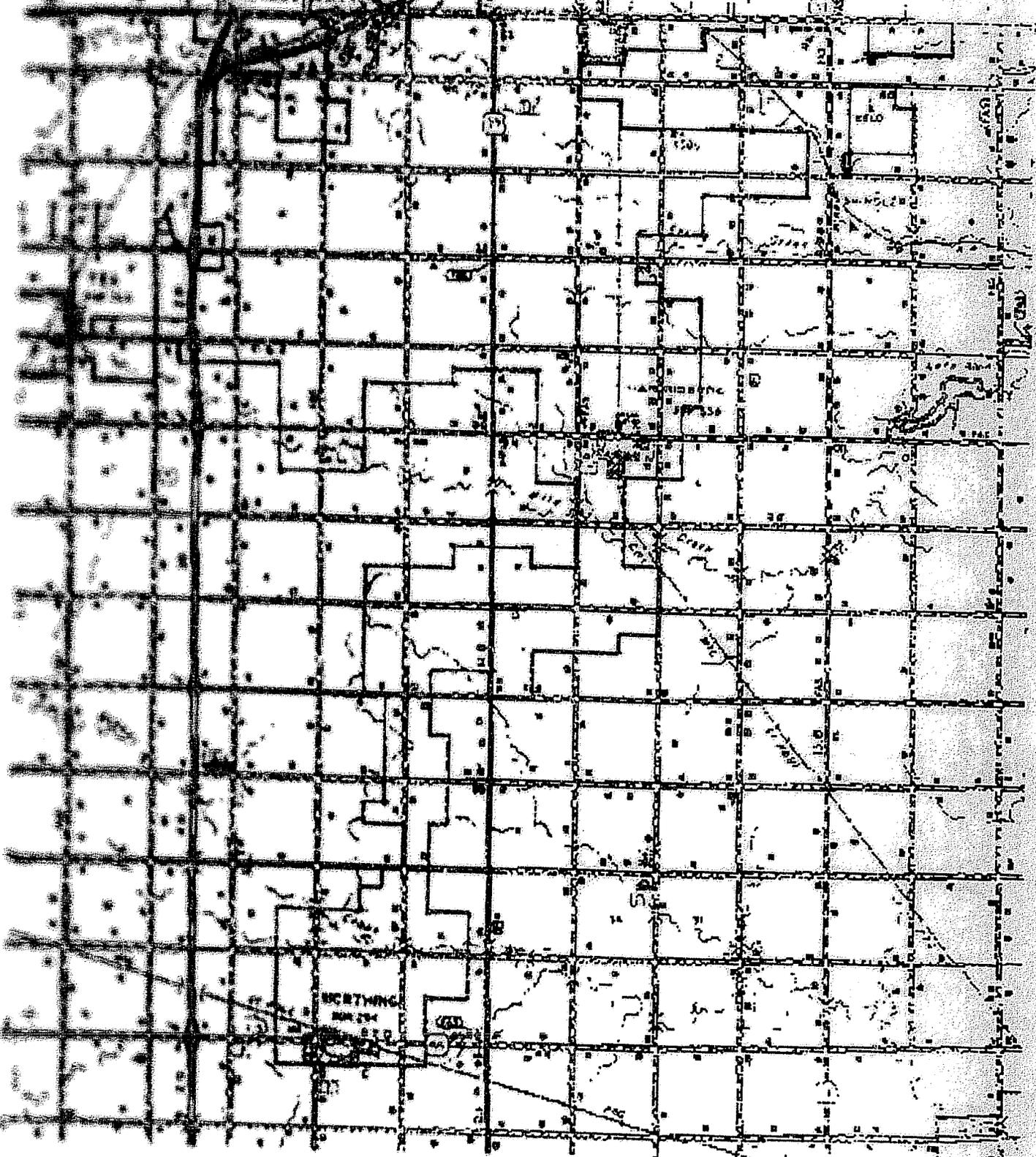
**ALCESTER OFFICE**  
 PO Box 105  
 605 SD Highway 11  
 Alcester, South Dakota 57001-0105  
 Telephone: 605-934-1961  
 Fax: 605-934-1964  
 Toll-Free in SD: 1-800-333-2859

DETAIL MAP		
RURAL ELECTRIFICATION ADMINISTRATION		
STATE/COUNTY	TOWNSHIP	PAGE NO.
SD, DAK.		3

R 50 W

OFFICIAL MAP  
R 48 W

BLAINE COUNTY



157

EXHIBIT  
8  
10-5-00 LG

# Original Government Survey

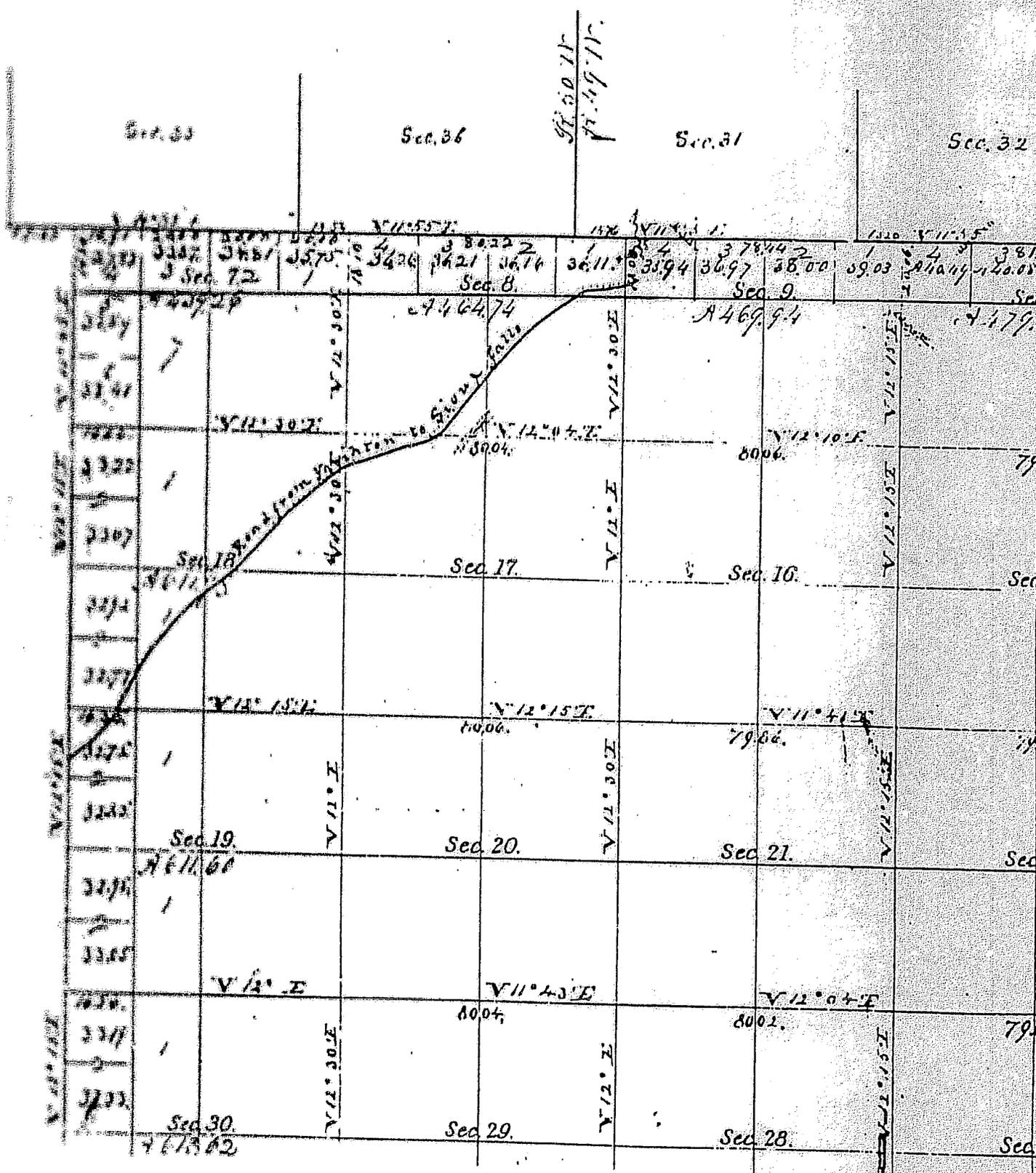
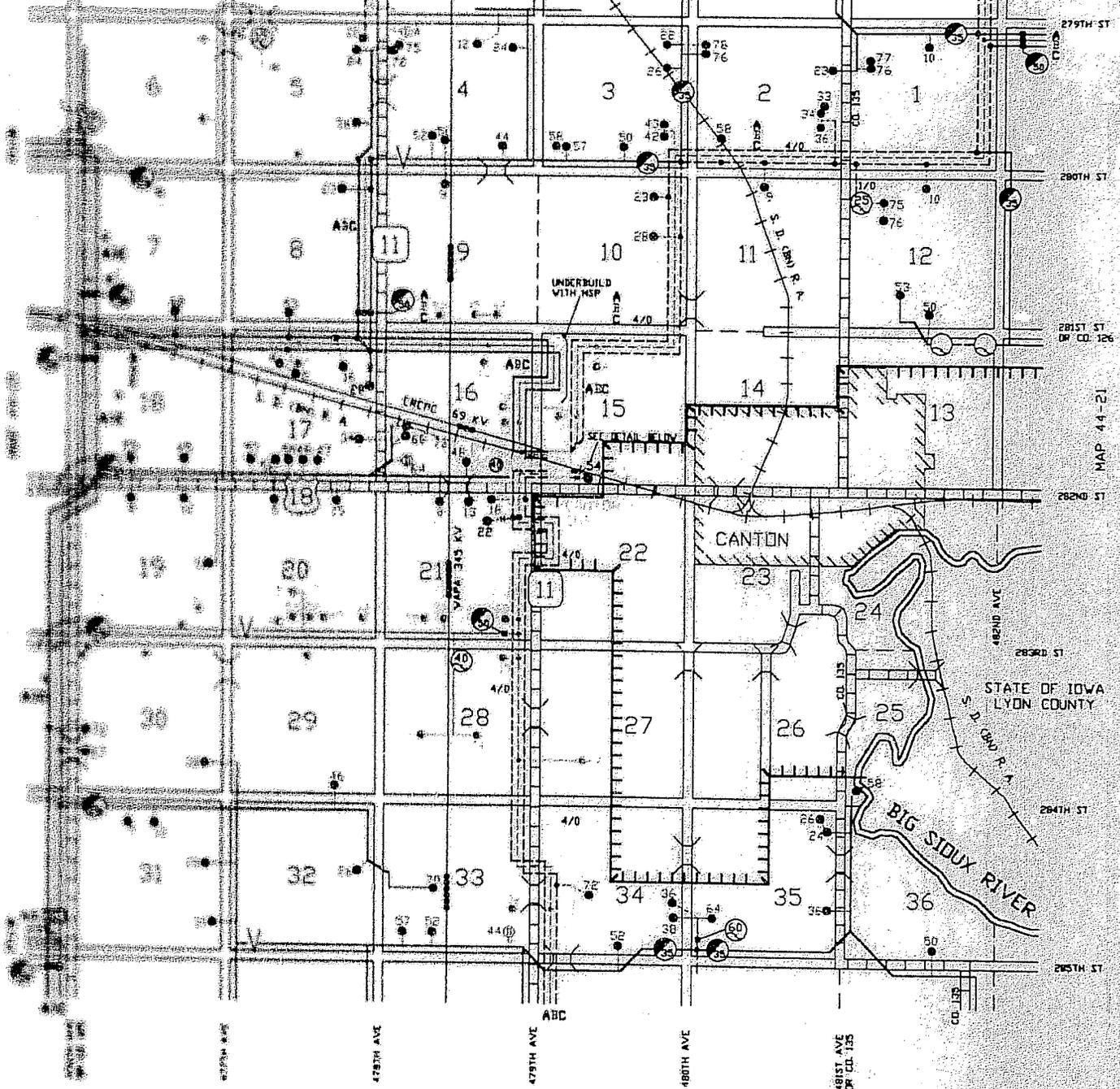
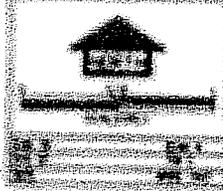
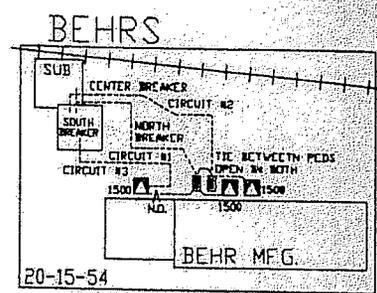


EXHIBIT  
9  
 10-5-00 LG





MAP 44-23



DATE	REVISIONS AND PURPOSE
12/29/94	REV. LINEN, T.V. NEW ACCTS.
02/15/95	REV. ACCTS. T.V. NEW LTR

**SOUTHEASTERN ELECTRIC COOPERATIVE, INC.**  
 A Touchstone Energy Cooperative

**MARION OFFICE**  
 PO Box 388  
 501 South Broadway Avenue  
 Marion, South Dakota 57043-0388  
 Telephone: 605-648-3618  
 Fax: 605-640-3778  
 E-mail: sec@suvisenet.com

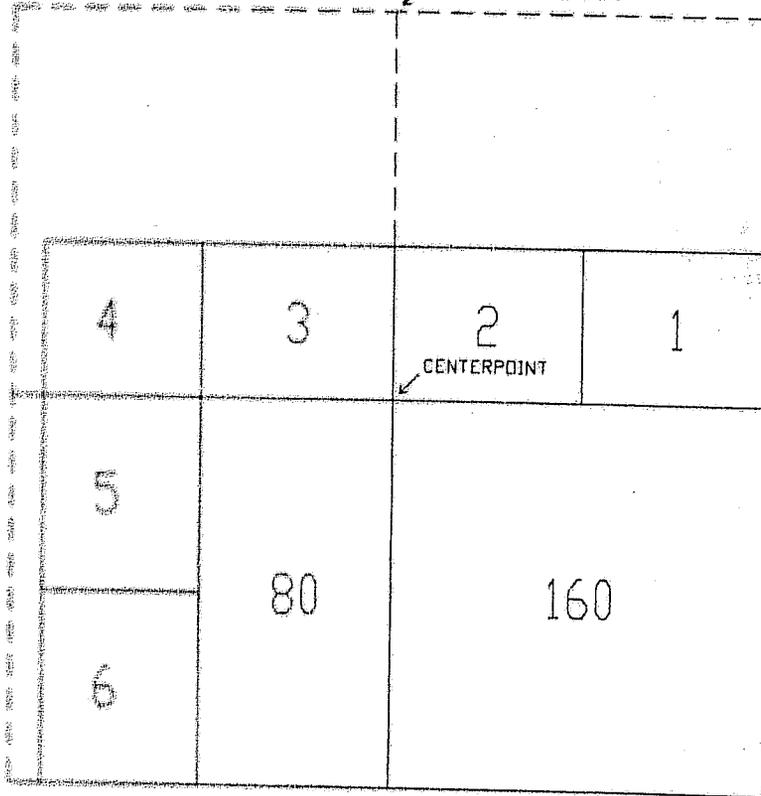
**ALCESTER OFFICE**  
 PO Box 105  
 605 SD Highway 11  
 Alcester, South Dakota 57001-0105  
 Telephone: 605-934-1961  
 Fax: 605-934-1964  
 Toll-free in SD: 1-800-333-2859

DETAIL MAP		
RURAL ELECTRIFICATION ADMINISTRATION		
STATE/COUNTY	TOWNSHIP	PAGE NO.
SD, DAK. LINCOLN	T 98 N R 49 W CANTON WEST	7

160

NORTH / WEST CORRECTIONAL SECTION  
NORMAL SECTION

- CENTERLINE
- HALF MILE LINE
- 1/4 SECTIONLINE

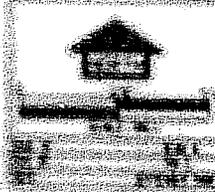


- CENTERLINE
- HALF MILE LINE
- 1/4 SECTIONLINE

**EXHIBIT**

12

10-5-00 LG



DATE	REVISIONS AND PURPOSE

**SOUTHEASTERN ELECTRIC COOPERATIVE, INC.**  
A Touchstone Energy Cooperative

**MARION OFFICE**  
PO Box 388  
501 South Broadway Avenue  
Marion, South Dakota 57043-0388  
Telephone: 605-646-3619  
Fax: 605-646-3776  
E-mail: sec@sunrisenet.com

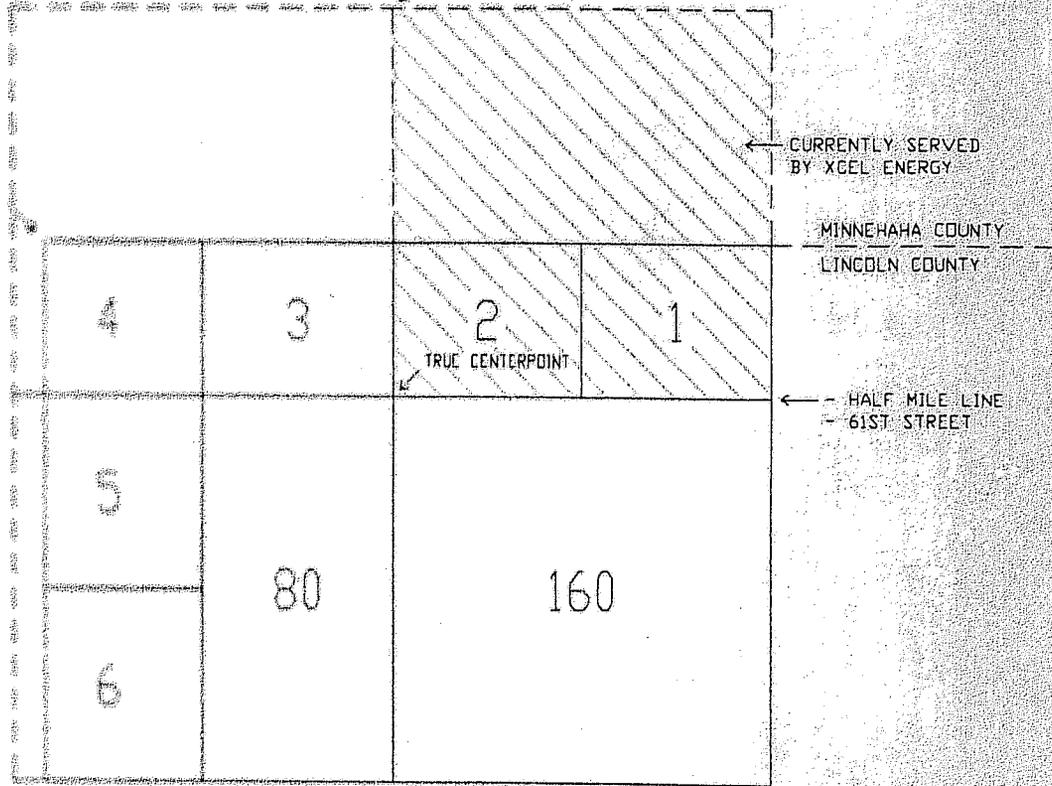
**ALCESTER OFFICE**  
PO Box 105  
605 SD Highway 11  
Alcester, South Dakota 57001-0105  
Telephone: 605-934-1961  
Fax: 605-934-1964  
Toll-Free in SD: 1-800-333-2850

DETAIL MAP		
RURAL ELECTRIFICATION ADMINISTRATION		
STATE/COUNTY	TOWNSHIP	PAGE NO
SD: DAK		8

161

# HISTORICAL / SEC. INC. INTERPRETATION

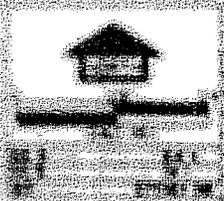
- TRUE CENTERLINE
- HALF MILE LINE
- 1/4 SECTIONLINE



**EXHIBIT**

13

10-5-00 L6



DATE	REVISION AND PURPOSE

**SOUTHEASTERN ELECTRIC COOPERATIVE, INC.**  
A Touchstone Energy® Cooperative

<p><b>MARION OFFICE</b> PO Box 388 501 South Broadway Avenue Marion, South Dakota 57043-0388 Telephone: 605-648-3619 Fax: 605-648-3778 E-mail: sec@sunrisenet.com</p>	<p><b>ALCESTER OFFICE</b> PO Box 105 605 SO. Highway 11 Alcester, South Dakota 57001-0105 Telephone: 605-934-1961 Fax: 605-934-1964 Toll-Free In SD: 1-800-333-2850</p>
---	---

DETAIL MAP		
RURAL ELECTRIFICATION ADMINISTRATION		
STATE/COUNTY	TOWNSHIP	PAGE NO.
SD, DAK.		9

169



**NEXT**

**DOCUMENT (S)**

**BEST IMAGE**

**POSSIBLE**

AN ORDER OF THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA, held in its offices, in the City of Pierre, the Capital, this 1st day of July, 1976.

PRESENT: Commissioners Weiland, Ecker and Kinkel

IN THE MATTER OF ESTABLISHING )  
SOUTHERN TERRITORIAL ELECTRIC )  
BOUNDARIES WITHIN THE STATE )  
OF SOUTHERN SIOUX (SIOUX FALLS )  
AREA.)

DECISION AND ORDER

(P-3106)

This matter having come on for hearing after due notice on the 7th day of June, 1976, at the hour of 1 o'clock p.m. in the Meeting Room of the County Courthouse in Sioux Falls, Minnehaha County, South Dakota, and the Commission having heard all the testimony and examined all records and documents, and being fully advised in the premises, and for good cause shown, the following findings of fact, conclusions of law and order are hereby entered for all territorial boundaries in the Sioux Falls Area, except for territorial boundaries in and around the City of Brandon, said territorial boundaries in and around the City of Brandon to be established by the Commission in a separate Decision and Order:

FINDINGS OF FACT

I.

That proposed electrical territorial maps on record covering the entire area herein were served on all parties hereto.

II.

That agreements and stipulations have been entered into by all parties hereto regarding territorial boundaries, the same being on file and hereby incorporated as if set forth in full herein.

III.

That unretracted testimony at the hearing establishes that portions of all parties hereto are best served and most benefited by the territorial boundaries agreed and stipulated to by the parties, said agreements and stipulations being on file and previously incorporated herein.

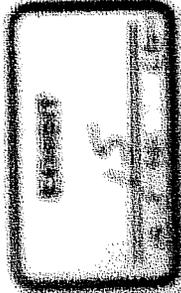
IV.

That the Official Electrical Territorial Maps attached hereto and being hereby incorporated as if set forth in full herein constitutes the aforementioned territorial boundary agreements and stipulations by the parties.

CONCLUSIONS OF LAW

I.

That the territorial boundaries enumerated in the attached Official



Official Territorial Maps are just, reasonable and fair to all parties hereto and their customers.

ii.

That the Commission hereby establishes said territorial boundaries set forth in said map as the assigned service area or areas for each electric utility being a party hereto pursuant to SDCL 49-34A-44.

iii.

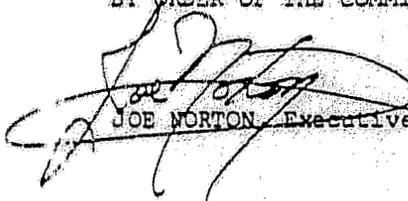
That the attached Official Electrical Territorial Maps have been prepared to accurately and clearly show the boundaries of the assigned service area of each electric utility being a party hereto.

ORDER

It is hereby:

ORDERED, that the territorial boundaries enumerated in the attached Official Electrical Territorial Maps be, and the same hereby are, established as the assigned service area or areas of each electric utility being a party hereto.

BY ORDER OF THE COMMISSION:



JOE NORTON, Executive Secretary

(OFFICIAL SEAL)

AT A REGULAR SESSION of the Public Utilities Commission of the State of South Dakota, held in its offices, in the City of Pierre, the Capital, this 1st day of July, 1976.

PRESENT: Commissioners Weiland, Ecker and Klinkel

IN THE MATTER OF ESTABLISHING )  
CERTAIN TERRITORIAL ELECTRIC )  
BOUNDARIES WITHIN THE STATE )  
OF SOUTH DAKOTA (SIOUX FALLS )  
AREA) . )

DECISION AND ORDER

(F-3106)

This matter having come on for hearing after due notice on the 7th day of June, 1976, at the hour of 1 o'clock p.m. in the Meeting Room of the County Courthouse in Sioux Falls, Minnehaha County, South Dakota, and the Commission having heard all the testimony and examined all records and documents, and being fully advised in the premises, and for good cause shown, the following Findings of Fact, Conclusions of Law and Order are hereby entered for all territorial boundaries in the Sioux Falls Area, except for territorial boundaries in and around the City of Brandon, said territorial boundaries in and around the City of Brandon to be established by the Commission in a separate Decision and Order:

FINDINGS OF FACT

I.

That proposed electrical territorial maps on record covering the areas at issue herein were served on all parties hereto.

II.

That agreements and stipulations have been entered into by all parties hereto regarding territorial boundaries, the same being on file and hereby incorporated as if set forth in full herein.

III.

That uncontroverted testimony at the hearing establishes that customers of all parties hereto are best served and most benefited by the territorial boundaries agreed and stipulated to by the parties, said agreements and stipulations being on file and previously incorporated herein.

IV.

That the Official Electrical Territorial Maps attached hereto and being hereby incorporated as if set forth in full herein constitutes the aforementioned territorial boundary agreements and stipulations by the parties.

CONCLUSIONS OF LAW

I.

That the territorial boundaries enumerated in the attached Official

F-3106

BEFORE THE

PUBLIC UTILITIES COMMISSION

STATE OF SOUTH DAKOTA

In the matter of:

Establishing Certain Territorial  
Electric Boundaries Within the  
State of South Dakota (Sioux Falls area.)

Minnehaha County Courthouse  
Meeting Room  
Sioux Falls, South Dakota  
June 7, 1976  
1 o'clock P.M.

BEFORE:

Mr. Jack Welland, Chairman, Public Utilities Commission,  
Pierre, South Dakota

Ms. Norma Klinkel, Commissioner, Public Utilities  
Commission, Pierre, South Dakota

Mr. Feder K. Ecker, Commissioner, Public Utilities  
Commission, Pierre, South Dakota

APPEARANCES:

Mr. Mark Meterhenny, Attorney for the Public Utilities  
Commission, Vermillion, South Dakota

Mr. Larry Gunderson, Public Utility Commission Staff  
Engineer, Pierre, South Dakota

Mr. Lee Larscheid, Director of Fixed Utilities,  
Pierre, South Dakota

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COURT REPORTING OFFICER  
DICK THIEVES & ASSOCIATES, INC.  
132 SOUTH DAKOTA AVENUE  
SIOUX FALLS, SOUTH DAKOTA 57102

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CHAIRMAN WEILAND: We will go on the record now in the matter of establishing territories, certain territorial boundaries within the State of South Dakota, electric boundaries, Sioux Falls area. Now, this afternoon this hearing deals with all of the area included in this order except the City of Sioux Falls. Now, that particular hearing will commence at 7:30 this evening. So if there are some people here interested only in the Sioux Falls City area, that part of it will be taken up tonight at 7:30. I will have to read this order into the record now after which time I will turn that particular part of the proceeding over to our attorney who is Mark Melerhenry. He is the Commission's attorney and he means to be helpful to all groups here. If there are some folks here who wish his assistance in some way, why that is what he is here for. He is not representing anybody. He is simply here availing himself to people and to the Commission.

On July 1, 1975, the South Dakota Public Utilities Commission received authority to regulate gas utilities operating within the State of South Dakota. Included with the new responsibility of this regulation was the language in SDCL 40-34A-44

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which states: on or about July 1, 1976, the Commission shall, after notice and hearing, establish the assigned service area or areas of each electric utility and shall prepare or cause to be prepared a map or maps to accurately and clearly show the boundaries of the assigned service area of each utility.

Pursuant to this statutory mandate, the Commission determined that boundaries of the electric utilities should be established on available county highway maps of sufficient size to accurately reflect the territory delineation of each utility operating within the county and that hearings should be held state wide for the purpose of determining said territorial boundaries.

Therefore the Commission has determined that for the purpose of establishing territorial boundaries for the following counties and electric utilities serving within counties, a hearing shall be held at Sioux Falls, South Dakota. Such hearing will include the following counties and electric utilities.

I will read the counties first. Clay, Union, Lincoln, Moody, Lake, Brookings, Minnehaha except Sioux Falls. And the effected utilities involved are

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Clay-Union Electric Corporation, Union County  
Electric Coop, Lincoln-Union Electric Coop, Sioux  
Valley Empire Electric Association, McCook Electric  
Coop, Kingsbury Electric Coop, Hamlin-Deuel Electric  
Coop, Intercounty Electric Association, Turner-  
Hutchinson Electric Coop, Northern States Power,  
Otter Tail Power, Iowa Public Service, Madison  
Municipal Electric, Valley Springs Municipal Electric,  
Vermillion Municipal Electric, Volga Municipal  
Electric, Brookings Municipal Electric, Elk Point  
Municipal Electric, Beresford Municipal Electric,  
Aurora Municipal Electric, Arlington Municipal  
Electric, Colman Municipal Electric, Flandreau  
Municipal Electric.

It is therefore ordered that on Monday, June  
7, 1976, at the hour of 1:00 o'clock P.M. in the  
meeting room of the county courthouse in Sioux Falls,  
Minnehaha County, South Dakota, be the time and place  
for the hearing to determine --- in determining the  
electric territorial boundaries for the counties and  
electric utilities listed above herein.

We have had other meetings of this nature and  
we have worked out a procedure, a hearing procedure  
that works very well. I will now turn this particular  
part of the hearing over to our counsel, Mark Meierhenry

who will explain how we have worked in other jurisdictions and what we will be doing here today.

MR. MEIERHENRY: Ladies and gentlemen, the procedure we will follow or we propose to follow unless there is a serious objection from anyone is that first the staff will enter the maps that are shown here, or attempt to enter them and their proposals. I will conduct an examination of Mr. Larry Gunderson who prepared these maps and when I am done anyone will be able to cross-examine him as to how he arrived at the maps or anything of that nature. Once he is done you may offer any witnesses that you have, any testimony that you have or any exhibits and the Commission will gladly receive those for the purpose of this hearing is to gather as much information as possible, and we would hope to conduct a hearing with that in mind. I might state that at this time we would like the record to show appearances and if you make any statements or have any objections we would ask that you state your name prior to speaking so the court reporter can get your name down in the record. And I would like to start in the front row and at this time we will just note appearances. I might note for the record Lee

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Larscheid, Larry Gunderson and Mark Meierhenry are here with the Commission Staff. If you are representing anyone or intend to speak at a later date, please stand and identify yourself and any affiliation you might have or whom you might be representing.

MR. BILL: I am Manford Bill, resident of Brandon.

CAROLYN BILL: Carolyn Bill, resident of Brandon.

CAROLYN SEWELL: I am Carolyn Sewell and I am representing the concerned citizens of Brandon, South Dakota, that are on NSP now.

TOM NEVILLE: I am Tom Neville, employee of Sioux Valley Electric, Colman.

DAN CARLSON: Dan Carlson, Sioux Valley Electric, Colman.

AL GLOVER: I am Al Glover. I am attorney for Sioux Valley Electric of Colman.

JOHN FRITZ: John Fritz, Sioux Valley Electric at Colman.

VIRGIL HERRIOTT: Virgil Herriott.

WAYNE PETERSON: Wayne Peterson, Farmer Rural Farmer.

SELMER JOHNSRUD: Selmer Johnsrud, Northern States Power Company.

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VICK GRAHAM: Vick Graham, Northern States Power Company.

DEMING SMITH: Deming Smith, one of the attorneys for Northern States Power Company.

LARRY PIERSOL: Larry Piersol, one of the attorneys for Northern States Power Company.

DALE BUTLER: Dale Butler, general manager, NSP.

P.J. BREWER: P.J. Brewer, Otter Tail Power Company.

TED RODENBERG (sp): Ted Rodenberg, Otter Tail Power.

RON KUNKEL: Ron Kunkel, Clay-Union Electric, Vermillion.

EARL MCCART: Earl McCart, taxpayers of Sioux Falls.

MARGARET SULLIVAN: Margaret Sullivan.

BILL KENYON: I am Bill Kenyon, attorney for Robert Hillgren.

LEE NELSON: Lee Nelson, Turner Hutchinson Electric at Marion.

ROLAND ANDERSON: Roland Anderson, Kingsbury Electric, DeSmet.

**NEXT**

**DOCUMENT (S)**

**BEST IMAGE**

**POSSIBLE**

GREG SHERMAN: Greg Sherman,  
City of Brookings.

WES HAYS: Wes Hays, Brookings.

ELMER WAHL (sp): Manager Lincoln-  
Union Electric.

BOB FRIEBERG: Bob Frieberg, City  
attorney of Beresford.

GORDON CRAWFORD: Gordon Crawford,  
Lincoln-Union Electric, Alcester.

CAROL HANSON: Carol Hanson, City  
auditor, City of Beresford.

GENE JOHNSON: Gene Johnson, Mayor  
of Brandon.

MR. MEIERHENRY: Any other appearances?

At this time I propose to call Mr. Gunderson. Is  
there any objection at this time to the proposed  
procedure? I will call Larry Gunderson.

LARRY GUNDERSON,

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

EXAMINATION BY MR. MEIERHENRY:

Q State your name, address and position.

A My name is Larry Gunderson. I reside at 104 North  
Case Drive, Pierre, South Dakota. I am an engineer  
for the Public Utilities Commission.

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Q And pursuant to the territorial mandate of the legislature have you been involved in the preparation of maps concerning territories for electric companies?  
 A Yes, I have.

Q And what information have you used in preparing these maps?

A I have used the agreements that were sent by the separate utility companies, and in cases where there were disagreements I used previous dockets that were that complaints were sent in on and the electric lines that were submitted, maps of electric lines that were submitted by the affected utilities that weren't in agreement.

Q And prior to this hearing have you marked certain exhibits?

A Yes, I have.

Q And what exhibits --- what are the exhibit numbers of those exhibits?

A There is SF 1 through SF 7.

Q And what are these exhibits?

A These are county maps, the seven county maps that are for examination today.

Q And in the preparation of these, how did you do that?

A Okay. As I said I used the agreements that were sent in by the utilities and in Minnehaha County where there

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are --- we are mainly dealing with three disagree-  
ments, I used the electric lines and former dockets  
that were before the Public Utilities Commission.

Q

Now, prior to this time have you mailed copies of  
these proposed geographic areas to the various  
utilities involved?

A

Yes, I have.

Q

And when did you do that?

A

On last Tuesday.

Q

And how are they sent?

A

By mail.

Q

And to whom?

A

To the managers or the presidents of the utility  
companies.

Q

And I will show you what has been marked as Exhibit  
SF-1 and if you could step over here, please.  
(Witness complies)

Q

What utilities are affected by SF-1?

A

Okay. Brookings County, H-D Electric, Kingsbury  
Electric, Sioux Valley Electric, Otter Tail, City  
of Arlington, the City of Volga, the City of Brookings  
and the City of Aurora.

Q

Is this one of the counties where all the utilities  
in that county have reached agreement?

A

The Commission Staff has not received a signed

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agreement from Sioux Valley Electric and Otter Tail, but it is the understanding of the Staff that they were in agreement, and maps were submitted that reflected that agreement.

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Q And SF-1, what county is involved there?  
A Brookings County.

Q The color codes, would you explain the color codes for the record?

A Otter Tail is light blue. That is completely shaded in, and vertical or diagonal green lines represent the various municipal electricians that are involved.

Q Do you have any attachments to SF-1 that would assist the Commission?

A Yes, I do.

Q What are they?

A I have for Exhibit 1-A, I have the territorial agreement between Sioux Valley Electric Association and the Town of Aurora. Exhibit SF-1-B, Sioux Valley Empire Electric Association and the City of Brookings. Also it might be noted in here that the City intends to purchase Sioux Valley Empire Electric facilities within the city limits of Brookings. SF-1-C which is Sioux Valley Empire Electric Association and the City of Volga. SF-1-D which is Sioux Valley Empire Electric Association and Kingsbury Electric. SF-1-E which is

1 Sioux Valley Empire Electric Association and the City  
2 of Arlington.

3 Q Any other materials that you have used in preparing  
4 Exhibit SF-1?

5 A Only the maps that were submitted and are the stuff  
6 intended to reproduce exactly what was submitted  
7 to us.

8 Q What is Exhibit SF-2?

9 A It is a map of Clay County.

10 Q What utilities were affected?

11 A Clay-Union Electric, Lincoln-Union Electric, Turner  
12 Hutchinson Electric and the City of Vermillion.

13 Q Are there any other materials which you wish to bring  
14 to the counsel's attention which explains the map?

15 A Exhibit 2-A which is Exhibit A on the map is a map  
16 of the City of Vermillion. On the expansion we lost  
17 part of the very northern border. Let's see, the  
18 northern most lines on the portion that did run off  
19 the map would be approximately 4,400 feet north of  
20 section --- the section line. Also this is a 50  
21 percent reduction of what was set in, so one inch  
22 equals 800 feet instead of one inch equals 4.

23 Q And all the green shaded area is municipal power  
24 for Vermillion, is that correct?

25 A Yes.

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Q

Any other exhibits or attachments to Exhibit 2?  
Exhibit 2-B which I don't have right now. Evidently  
I have left it. Over there is an agreement between  
Turner-Hutchinson and Clay-Union, and Exhibit 2-  
which is an agreement between Lincoln-Union and  
Clay-Union.

Q

These are agreements?

A

Yes.

Q

And on Exhibit 2 the shaded area, the green shaded  
area is in reference to the City of Vermillion?  
That is correct.

A

Q

What about Exhibit 3, what is that?

A

Exhibit 3 is Lake County.

Q

What utilities are involved?

A

Northern States Power, Otter Tail, the City of  
Madison, Sioux Valley Electric --- Empire Electric  
Association, McCook Electric and Intercounty Electric.

Q

And what exhibits are attached to the map which is  
marked 3?

A

There is an expansion of the Junius area which is  
marked as SF-3-A. It shows the territory served  
in the city between NSP and Sioux Valley Empire  
Electric. And 3-B is a map of Madison, the boundary  
lines between Sioux Valley Empire Electric and  
Madison. Three-C is the territorial contract between

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Sioux Valley Empire Association and the City of Madison. Three-D, this is a letter from the City of Madison, also explains the border of Madison, but also lists 19 people that are affected outside. They are in a foreign territory. They are being served by other utilities. In other words, someone that is in Sioux Valley Empire's territory but are served by the City of Madison. And 3-E is an agreement between Sioux Valley Empire Electric Association and McCook Electric. And 3-F is an agreement between Sioux Valley Empire Electric and Northern States Power which also has --- besides Lake County has their agreement for Minnehaha County and Moody County and also delineates the three areas that are not in agreement on page 6.

Q And the areas that are not in agreement are basically where?

A That is not in Lake County, in Minnehaha County.

Q What about Exhibit 4?

A Exhibit 4 is Lincoln County.

Q What utilities are affected in Lincoln County?

A Iowa Public Service, Northern States Power, the City of Beresford, Lincoln-Union, Turner-Hutchinson and Clay-Union.

Q Are there any attachments to that exhibit which you

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have used in preparing it?

A Yes, there is an enlargement of Tea, South Dakota, which shows NSP and Lincoln-Union boundaries within the city. Also Exhibit SF-4-B which includes agreements or delineations of territories between Lincoln-Union and the City of Beresford, Lincoln-Union and Turner-Mutchinson, Lincoln-Union and Clay-Union and Lincoln-Union and NSP. It also includes order 8157 by the Commission involving a problem area between Lincoln-Union and NSP and the agreement that was arrived at. That agreement involved the west half of the section --- yeah, the west half of the southwest quarter of section 16 in Township 100, range 49. Also this agreement between Lincoln-Union and NSP which is a different one than the one above, it's written differently and it refers to Exhibit A which the Staff intended to reflect on this SF-4.

Q So there are three attachments, A,B,C and the order of the Commission?

A There is just A and B.

Q What is Exhibit 5?

A Exhibit 5 is Minnehaha County.

Q Have you prepared a map for Minnehaha County?

A Yes, I have.

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1 Q What have you used to prepare that map? Since the  
2 time that you have mailed out Exhibits 1 through 4,  
3 before we get to Minnehaha County, are there any  
4 corrections on any of these maps that were made  
5 after the time that you sent them to the utilities?

6 A Yes. Well, they haven't been made at this time,  
7 but they have been brought to my attention. In Lake  
8 County there is a section of NSP that is reflected  
9 in section 25 of range 24 west, 107 north and that  
10 should be section 24 of the same range. In other  
11 words, it should be one mile north of where it is  
12 at. Also in Lincoln County there is a small area  
13 between the --- it's Highway 29 and 229 which belongs  
14 and the map reflect it as belonging to Northern  
15 States Power. They are the only two so far that have  
16 been brought to my attention.

17 Q And the map as presently marked will be corrected  
18 before they are submitted to the Commission by the  
19 Staff?

20 A Yes.

21 Q Now, back to Minnehaha County.

22 A I have prepared the map. I have prepared the map  
23 first from the agreement that was sent in, and  
24 submitted by the various utilities, and as I stated  
25 earlier as reflected in Exhibit SF-3-F there are

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three areas that are in disagreement in this county that we are dealing with at this hearing.

Q Are those areas reflected in that exhibit and if so on what page?

A They are on page 6, and they read as part of the south half of the northwest quarter of section 3, Township 102 north, range 49 west of the principle meridian, east of US Highway 77 known as the Peterson First Edition, all the area situated there. That was number one. Number two is all area situated within the corporate limits of the City of Brandon as they existed on the date of this agreement. And number three is the south half of section 32 and the south half of section 33, Township 102 north and section 4 and 5, Township 10 --- 101 north, all in the range of 48 west of the fifth principle meridian.

CHAIRMAN WEILAND: The last disputed

A The last disputed area would have come to the Commission's attention as Country Gable Estates, and that was under docket 3066.

Q Now, what was the date of that agreement, just to clear up the city limit part of it? Is there a date on that agreement, the city --- the second part that you referred to, the city limit as of the

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day of this agreement, what is the date of this agreement?

A The date of the agreement is 19th day of January, 1976, but this is an area that is not in agreement.

Q I understand that. And those three areas that you have mentioned, is the Staff making a recommendation to the Commission at this time as to what utilities should get those areas?

A Yes, we are.

Q And what is that recommendation?

A For the first part which is known as the Peterson First Edition, this was brought first to the Commission's attention by a complaint brought by Northern States Power against Sioux Valley Electric. They are under docket F-3701. In the docket presently first of all, presently Sioux Valley Empire Electric is serving that area and have been informed that there are three trailer houses being served from it. From the docket there was --- the letters and information submitted showed that Sioux Valley Empire Electric brought service to this area in question after the first of July, 1975. Now, on the map it was submitted that their electrical lines as of March 21, 1975 which I have marked as Exhibit SF-5-C, they shall <sup>have</sup> no electrical lines serving this area.

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1 After taking and studying this map and using the  
2 equal distance principle, it was --- the Commission  
3 Staff decided that this area in actuality was closer  
4 to Northern States Power than it was to Sioux Valley  
5 Empire Electric, and therefore recommended that  
6 Northern States Power, that this become Northern  
7 States Power territory.

8 Q What about the second area of disagreement? Would  
9 you correct me if I am wrong, is everything within  
10 the city limits of Brandon, is that right?

11 A That is correct.

12 Q What is the Staff's recommendation and the reasons  
13 there for it?

14 A In Exhibit SF-5-D, again a map submitted by Sioux  
15 Valley Empire Electric Association which shows the  
16 area around the City of Brandon and both --- shows  
17 both the lines of Sioux Valley and Northern States  
18 Power.

19 Q Mr. Gunderson, are there any other utilities besides  
20 the two that you have just mentioned that are  
21 affected in this dispute?

22 A No.

23 Q All right. Go ahead.

24 A There was an agreement between Sioux Valley Empire  
25 Electric and Northern States that the south half of

1 the northwest quarter of section 27 and the south  
2 half of the northeast quarter of section 28 and the  
3 southeast quarter of section 28, and the northwest  
4 quarter of section 32 --- excuse me, that was not  
5 involved here. The northwest quarter of section 33,  
6 also part of the west half of section 27 lying south  
7 of the center line of the US Interstate Highway  
8 90 and northwest of the center line of the Great  
9 Northern Railroad right of way, and one other area  
10 which comes into effect here is part of the south  
11 half of section 35 lying south of the center line  
12 of US Highway 8 --- Highway 16, excuse me. Now,  
13 Commission Staff noted that at arriving at this  
14 point on Interstate 90 halfway section, that equi-  
15 distantly that Sioux Valley Empire Electric ran  
16 down the eastern part of that section and Northern  
17 States served the west part of that section, distribu-  
18 tion down the west side. It also noted that the  
19 area in section 27, that Gene Iverson owned the  
20 entire half section south of Interstate 90, the  
21 west half and in section 34 that Albert Nelson and  
22 Ella Graff owned the northwest quarter of that section  
23 with the exception of a small plat that is allotted  
24 for a church and that is in the center of the section.  
25 Since in both instances the Iversons, the Nelsons

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and the Graffs were served by NSP and included all of this territory also, the Staff felt that NSP should serve that territory even though there is a railroad line running through the Iverson property and could possibly be a little more difficult for NSP to bring the line in to part of that area than it would be for Sioux Valley Empire Electric.

COMMISSIONER ECKER: Mr. Gunderson,

you mentioned North Western --- excuse me, Northern States. I apologize. I refer to Northern States Power.

Q Now, is one of the basis of your opinion the proximity then of the distribution of the lines of Northern States Power?

A Yes.

Q Is there any problem in that area with entanglement or any other reason not to use the equidistant principle?

A On the southern parts going straight across which would reflect on SF --- Exhibit SF-5-E there is a line operated by Sioux Valley Empire Electric that runs across the center, just north of the center line of section which would be just north of Holly Alevard and if one were to use the equal

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distance principle there would possibly be a diagonal or some other measurement that would make it difficult to stake out.

Q What about the third area?

A Okay. We are just getting inside the town of Brandon now.

Q Let me hold this up so that everyone can see. Is this the one you wanted?

A First is the exhibit I referred to before, SF-5-E and here is SF-5-F which both were submitted. Anyway, this one --- this one was submitted by Northern States Power showing their distribution in the City of Brandon as of March 21, 1975, and this shows the Sioux Valley lines within the City of Brandon.

Q When you say this, would you refer to the number.

A Excuse me, SF-5-E which shows the city or the Sioux Valley Empire Electric distribution lines within the City of Brandon. Now, in taking this I didn't have time to transfer all of the lines from one map to another map, and the lines were pretty clear cut. They weren't entangled. There happens to be a school yard in here which Sioux Valley --- I mean Northern States Power serves and all of this area in here which would be this area right here is served by Northern States Power. Then we go up here

1 which is known as the terrace area, the northern  
2 part of that. That is all served by Sioux Valley  
3 Empire. There are three houses on the south here,  
4 four houses in this area here that are served by  
5 NSP. Okay. This is the schoolhouse which was  
6 served previously by Sioux Valley Empire Electric,  
7 and this is the Fleetwood Edition which is also  
8 served by Sioux Valley Empire Electric, and this  
9 area right here which is blank is entirely served  
10 by Northern States Power. Also there is a mistake  
11 on this map. NSP serves seven houses on the west  
12 side of Fourth --- is it Fourth Avenue? Yeah,  
13 Fourth Avenue and two houses --- or excuse me,  
14 nine houses altogether in this area which I original  
15 had given to Sioux Valley Electric and that actual  
16 should be Northern States territory, Northern States  
17 Power territory there. That was a mistake. That was  
18 an error in the drafting. Also over here Sioux  
19 Valley Empire comes in and serves two or three  
20 houses along the highway. This line is complete to  
21 the property line behind the houses that are served  
22 by NSP. NSP does serve four houses on the north  
23 side of Dogwood Street, and they also serve on the  
24 south side of Dogwood Street. Up here on the north  
25 side of Holly Boulevard and where Church Hill Drive

1 at, that is where the church is at and the Staff  
2 found out there was no Church Hill Drive there at  
3 that time, and would recommend that that plat be  
4 given to Sioux Valley Electric which does serve  
5 that. Then going up the property boundary line  
6 between the two families I described before which  
7 were between Nelson and Fred Strub.

8 Q Is there any other exhibit which you have used in-  
9 side the City of Brandon?

10 A There is one more when we get to the eastern edge  
11 of Brandon. There is Exhibit 5-G and Exhibit 5-F  
12 which shows Northern States Power's line coming into  
13 the City of Brandon. Unfortunately the maps that  
14 were sent did not reflect quite accurately how this  
15 line actually entered the land. It entered 100 feet  
16 north of Cedar, the line here and goes right next  
17 to these lines on the southern border and then goes  
18 down the section line like these down past Highway  
19 16. And this the Commission, after going out and  
20 looking at Brandon, it wasn't feasible to see how  
21 a corridor could have been put in here that would  
22 be easily delineated, so Staff recommends instead a  
23 line just going straight over to this line and then  
24 straight north along the line there, and then coming  
25 up against the Brandon park edition. This is the

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scale plan. Also the southern border here, there is a new road that has been put in that isn't reflected and the Staff would recommend that the road be the boundary, the center line of the road be the boundary. Sioux Valley does have a line that runs along Highway 16 and this is approximately --- would be the eastern

Q Anything else as to the City of Brandon?

A In deciding this there were places where transmission or distribution lines did run through other people's territory and they were --- they do not serve anybody in that area, so the Commission Staff did not use those or did not use them in determination of territories, and this point here where the school is completely on this property and the school is completely up here, we have Sioux Valley up here above. Also we have NSP running straight through this area here. Those are 12.5 kv line and it would have been difficult to just split up the school or something of that nature, service to that school.

Q What about --- anything else in the City of Brandon?

A No.

Q What about the third area that you mentioned?

A The third area which was brought to this Commission attention and it's under docket No. P-3066 involves Country Gable Estates. Okay. This area again is

1 the south half of section 32 and the south half of  
2 section 33, Township 102 and section 4 and 5,  
3 Township 101 north, range --- all these are in  
4 range 48. As was previously presented to the  
5 Commission here, this is a map that is included with  
6 this docket 3056. You can see the lines are in red  
7 that are Sioux Valley's. This is the area in  
8 question and the green lines running through here is  
9 Northern States Power's line. The line as presented  
10 in the testimony is a 69 kv line until it enters  
11 the City of Brandon and to a point over here in  
12 section 31. On both ends of that it is 13.5 kv  
13 line. Anyway, in the Commission's decision on this  
14 they made the decision that 69 kv line suits for  
15 that is what the line should be considered as far,  
16 and therefore the Staff also took that consideration  
17 and did not use that line in determination of  
18 territory, and since it didn't use that line Sioux  
19 Valley Empire Electric is completely --- surrounds  
20 the area and there is no other Northern States  
21 Power lines within that area. That area would be ---  
22 the Staff would propose to give that territory to  
23 Sioux Valley Empire Electric.  
24 0 And are you asking the Commission to just take notice  
25 of your entire docket rather than offer it as an

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exhibit?

A Yes.

Q Okay. Are there any other exhibits which deal with Minnehaha County?

A Yes. Now, getting back to the people that were in agreement or the agreements within the county. One of all the agreement which I marked 09-5-A was an agreement between --- an agreement between Sioux Valley Empire Electric Association and the City of Valley Center. Also there is an agreement between Sioux Valley Empire Electric Association and Lincoln-Union Electric.

Q What number is that of ---

A That is Exhibit 09-5-B.

Q Any others in Minnehaha County, any other agreements?  
A Not to my knowledge. Also I would like to point out one thing, the City of Sioux Falls is just a block with diagonal lines that are reflected on this map. That is just to show that there is a city and municipality. It doesn't represent any territories or any boundaries between MSP and Sioux Valley --- or Sioux Falls, excuse me, municipal electric.

Q And that is drawn just as the city limits when this map doesn't apply to at this time, for this hearing not involved with it?





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Q Do you have any other information that you have in making this map?

A Yes, there is an agreement between the City of Hayward and the Electric Division of the Association which shows a line and boundary in the location of the boundary lines.

Q And what have you referred to as boundary lines?

A That is D.C.D. and D.C.D. is the City of Hayward Association and the City of Hayward.

Q Do you have any other information that you have arrived at in making this map of the location of the boundary and you have a map showing the location of the boundary lines, in that location?

A That is correct, but there is a map which we have not received of the location of the boundary lines in the City of Hayward, but it shows the location of the boundary lines in Hayward and the City of Hayward, and it shows the location of the boundary lines in Hayward and the City of Hayward, and it shows the location of the boundary lines in Hayward and the City of Hayward.

Q All right, what is D.C.D.?

A D.C.D. is Union County.

Q What utilities are involved in Union County?

A The Public Service, the City of Hayward, the City of Hayward and Berkeley, Union Electric, Lincoln Union and Clay-Union Electric.

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Q And have you used any additional -- have you had any agreements in Union County first of all?

A Yes, they are -- they are all in agreement.

Q And do you have any exhibits or attachments which reflect those agreements?

A Exhibit 22-7-A which is a map of Ward County, North Dakota, shows the boundary lines between Bismarck and Lincoln County and also electric lines over the map to the north between Bismarck Municipal and Lincoln County. Bismarck and Lincoln County, and an agreement by the Public Service in the town of Bismarck not made by Iowa Public Service, and it reflects that Bismarck, talked to the city engineer and that that was the agreement, that it should have been signed also.

Q All right. Is there also a map to compare with that one, is there?

A Exhibit 22-7-B is a map exhibited from the city of Bismarck showing the boundary between the city of Bismarck, and also there is a map of which shows the town of Bismarck. Both maps it shows the boundary delineations between Iowa Public Service and Lincoln County which that is. The witness agreement -- first of all, that is -- is an electric delineation board agreement.



**NEXT**

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1 maps as shown, the water boundaries with Brookings  
2 in the future. And with these maps we will be  
3 Brookings County -- I believe me, is there a reference  
4 on this map, Mr. Conderbert?

5 A Yes, there is. In section 12 north of here,  
6 in Township 112 north on the north shore of Lake  
7 Henderson which is R-D Electric and Over Fall, the  
8 staff omitted nothing in a very large section of  
9 Otter tail which served some persons up on the north  
10 shore. That was submitted to you -- a copy there  
11 and they both signed maps.

12 Q And will you change Exhibit 1 to Exhibit 2?  
13 (Witness complies)  
14 MR. WOODWARD: Subject to any  
15 objections or corrections from anyone present we  
16 will offer State Exhibit 1-A, B, C, D and E. There  
17 are no corrections.

18 A YES, I WOULD LIKE TO ASK --  
19 WAS WONDERING IF THE CITY OF BROOKINGS, AND THAT  
20 THIS MAP THAT WE HAVE GOT COPIES OF IS NOT CORRECT  
21 IF WE COULD HANDLE THE DETAILS HERE WHAT I WOULD  
22 WOULD BE IN YOUR HANDS AS A PART OF THE AGREEMENT AS  
23 WE HAVE WITH SIOUX VALLEY. I BELIEVE THAT WE  
24 CHECKED AND THEY COULD BE PARTICULARLY WITH THE  
25 MENT.

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MR. GLOVER: Sioux Valley would concur in that request, that the detailed map supplied by the City and Sioux Valley concerning our boundaries be admitted as evidence and accepted as the map outlining the territories, and they are in conformity with the written agreement also.

MR. MEIERHENRY: I certainly have no objections.

CHAIRMAN WELAND: Very well. That will be received then.

MR. GUNDERSON: That was all of the maps.

A VOICE: There are some that are rather a mix-up. They are very detailed and I think that their engineers and ours worked them out pretty good.

MR. MEIERHENRY: The additional maps which have been requested to be offered are E through F through J. We would offer those as well.

CHAIRMAN WELAND: Hearing no objection they will be received.

MR. MEIERHENRY: At this time we would offer --- first of all, are there any corrections to deal with the map which is marked SF-2 for Clay County? Larry, you have --- Mr. Gunderson, do you

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THE BOARD OF DIRECTORS  
OF THE COMPANY  
DO HEREBY CERTIFY THAT THE  
FINANCIAL STATEMENTS  
FOR THE YEAR ENDED 31st DECEMBER 1954  
AS SET OUT IN THE ACCOUNTS  
AND BALANCE SHEET  
AND THE SUPPLEMENTARY NOTES  
HEREON, WHICH FORM PART  
OF THE ACCOUNTS, ARE  
TRUE AND CORRECT  
AND THAT THE ACCOUNTS  
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TRUE AND CORRECT

1 into agreements with, and we would not object to  
2 their being admitted as long as you understand that  
3 the written agreements that we have written will be  
4 the guiding factor and will override written maps  
5 and also we will be happy to write to the Commission  
6 and point out the error that we have noted in the  
7 maps that we have examined and that you have submitted  
8 to us. We don't want to be bound, in other words,  
9 by not objecting to a map that is obviously in error  
10 and then ---

11 CHAIRMAN WEILAND: The written  
12 agreements prevail.

13 MR. GLOVER: All right. That's fine.

14 MR. MEIKENHRY: I would just like to  
15 point out for the Commission, perhaps the Commission  
16 is aware, that Mr. Gunderson has had to prepare maps  
17 for the entire state in a short period of time, and  
18 with all the corrections that have been made between  
19 these companies throughout this state, these maps  
20 are done as best we can at this time, and it is the  
21 intent to make them conform to any written agreements

22 MR. PIERSOL: May I say one thing with  
23 regard to Lake County. I am Larry Piersol. I am an  
24 attorney for Northern States Power Company. In your  
25 testimony, Mr. Gunderson, there was one change.

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THE UNITED STATES OF AMERICA, DISTRICT OF COLUMBIA, SS.

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_

known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Notary Public in and for the District of Columbia.

My commission expires this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and date first above written.

Notary Public in and for the District of Columbia.

My commission expires this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

In testimony whereof, I have hereunto set my hand and seal the day and date first above written.

Notary Public in and for the District of Columbia.

My commission expires this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

In testimony whereof, I have hereunto set my hand and seal the day and date first above written.

Notary Public in and for the District of Columbia.

My commission expires this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Notary Public in and for the District of Columbia.

My commission expires this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

In testimony whereof, I have hereunto set my hand and seal the day and date first above written.

Notary Public in and for the District of Columbia.

My commission expires this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

In testimony whereof, I have hereunto set my hand and seal the day and date first above written.

Notary Public in and for the District of Columbia.

My commission expires this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

In testimony whereof, I have hereunto set my hand and seal the day and date first above written.

Notary Public in and for the District of Columbia.

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CHARLES WILLARD: Hearing no objection they will be received.

MR. WELLS: At this time we will offer and are there any corrections that you have become aware of on 27-A, Mr. Gunderson, against the record which deals with Lincoln County?

MR. GUNDERSON: None other than the one that was mentioned to me previously.

MR. WELLS: All right, was that correction then made?

MR. GUNDERSON: No, it has not at this time.

MR. WELLS: Could you have it on the day of this trial?

MR. GUNDERSON: Certainly.

MR. WELLS: Are you are going to take it at this time?

MR. GUNDERSON: Right.

MR. WELLS: Are there any other matters or corrections to 27-A?

MR. GUNDERSON: I see none.

MR. WELLS: Mr. Gunderson, I would offer 27-A, B, C.

CHARLES WILLARD: Any objections? Hearing none they will be received.

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MR. MEIERHENRY: Mr. Gunderson, during the recess have you noted or have any corrections that you are aware of been pointed out in the Moody County map noted as SP-6?

MR. GUNDERSON: No.

MR. MEIERHENRY: At this time we will offer SP-6-A, B, C subject to any additions, corrections or comments dealing with Moody County.

CHAIRMAN WILLAND: Any objections? Hearing none they will be received.

MR. MEIERHENRY: As to Union County which is marked SP-7, have you noted any additions during the recess, Mr. Gunderson, or corrections?

MR. GUNDERSON: No. Except that I did change the scale in the Alcester map to reflect remember, it was reduced. The original map was reduced.

MR. MEIERHENRY: Subject to any additions, corrections or objections we will offer SP-7 which is Union County, South Dakota.

CHAIRMAN WILLAND: Any objections?

MR. CRAWFORD: We have no objection. We have one correction that will have to be made on the side boundary of the map of the City of Beresford. We have agreed with staff that we will

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submit that is written to the Commission prior to  
CHAIRMAN WILLARD: Very well. And  
of the agreements that are in writing, the written  
prevails over the map, the written agreements.

MR. SULLIVAN: Margaret Sullivan.  
As to Union County we would have three corrections  
for that particular area.

CHAIRMAN WILLARD: Will you bring  
them forward, please.

MR. SULLIVAN: As to District 24-1-6  
which is a map of Alexander, the map of Alexander also  
also reflect the service boundary between the  
Public Service Company and Lincoln Electric Power  
Electric Company in the northeastern corner. This  
is already mentioned in the service contract between  
these parties under the zoning and zoning, Item 14  
and 15, and it could be done in an order on ---

MR. CHAMBERLAIN: This is part of the  
description that was submitted, the detailed is  
submitted in the map.

MR. CHAMBERLAIN: While Mr. Gunderson  
is stating that is, we would also like to request  
that the feet shown on the map, underneath be  
written in. As it is the map is already submitted  
not to scale, and knowing the feet might be

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CHARLES WILLIAMS: They were made.

MR. ANDERSON: Yes, they were.

CHARLES WILLIAMS: They are agreed to by both parties.

MR. ANDERSON: Yes.

MR. WILLIAMS: Yes, the service area agreement was not changed. The corrections noted were only for the purpose of making corrections on the map submitted by Staff.

CHARLES WILLIAMS: Thank you very much.

MR. WILLIAMS: With those corrections and if there are no others, we offer Districts A, B, C, D, E, F and G.

CHARLES WILLIAMS: Any objections? Hearing none they will be received.

MR. WILLIAMS: As this was done for purpose of allowing my persons who are interested in Minnesota County, we will offer 50-5-4 through F.

MR. RIBBOLD: We do have a couple. I believe actually five items with regard to Minnesota County. First of all, the area between Highway 10 and 129 is actually -- I believe a portion of that would be Sioux Valley's, unless of course the Staff makes a contrary recommendation. All I am pointing out is the difference in the map. We would be happy to

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accept the map.

MR. GUNDERSON: The intent of the map was to draw the maps in accordance with the agreements.

MR. PIERSON: There is no written agreement I believe with -- excuse me there. The written agreement then controls and that would be Sioux Valley's area. Do you wish to see the map?

CHAIRMAN WILLARD: Can you do the corrections now?

MR. GUNDERSON: We might run into some more. I would like to enter an objection, not an objection but I would want to be made insofar as they are consistent with our written agreement, and I understand that the maps are being offered solely as evidence to be considered by the Commission and I believe our written agreement was one of the exhibits that was offered along with the maps, so that we consider ourselves in accordance with that. As far as the written agreement is concerned and as far as the maps that do not conform to the written agreements, we ask that those be amended, and it's our understanding that the engineer that was preparing these maps, I know he was under a time factor and he was attempting to draft them in conformity with the

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1 written agreement, so I have no objection to their  
2 being admitted as long as we understand that the  
3 written agreement will be the binding --

4 CHAIRMAN WILLARD: Very well.

5 MR. PIERSOL: Subject to our provisions  
6 the five exceptions in writing then and subject to  
7 the further exception, of course, that we are not,  
8 as the Commission understands, acquiescing to set  
9 recommendations with regard to Minnehaha County as  
10 they are being offered merely for the purpose of  
11 putting the Staff's recommendations before the  
12 Commission.

13 MR. MEIERHENRY: That is right.

14 These maps are not intended to be the final maps  
15 which will be issued after the Commission decides.  
16 This is evidence for the Commission to make these  
17 maps, to make that determination.

18 MR. PIERSOL: I take it then the  
19 disagreement between Staff, Sioux Valley Electric,  
20 Northern States Power Company, that the corrections  
21 mentioned which are a matter of written agreement  
22 can be furnished to the Staff at a later time and we  
23 can work out putting those five in that agreement.

24 MR. MEIERHENRY: I have no objection.

25 MR. CLOVER: That is fine.

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MR. MEIERHENRY: At this time we will then reoffer these with the intent of allowing any cross-examination of Mr. Gunderson after that.

CHAIRMAN WEILAND: Objections?

MR. MEIERHENRY: Other than those made prior.

CHAIRMAN WEILAND: Now, this is on the three areas?

MR. MEIERHENRY: These are just on the exhibits. Then we will, I presume, get to that Mr. Commissioner. This is just as to Exhibit 5A through E.

CHAIRMAN WEILAND: Okay. Any objections on Exhibit 5A through E?

MR. PIERSOL: None other than stated.

CHAIRMAN WEILAND: They will be received. Hearing no objection except those stated by Mr. Piersol, they will be received.

MR. MEIERHENRY: I have no further questions of Mr. Gunderson.

MR. GLOVER: Are those maps that were introduced today, were those the maps of the Brandon area also?

MR. GUNDERSON: Yes, Peterson Estates.

MR. GLOVER: C is Peterson Estates?

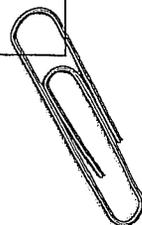
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Boulevard.

Q What is the exhibit number on which you demonstrated your Staff recommendations with regard to the City of Brandon?

A That would be SF-5-E --- 5-F which would be the lines submitted by NSP and the City of Brandon, and also on the eastern edge it would be G and H, G being submitted by Sioux Valley and H being submitted by Northern States Power.

Q Now, during your testimony you indicated I believe with regard to Exhibit SF-5-E that over what I would call Colburg's Edition there were I believe nine residences that should have been reflected as being NSP served, is that right?

A That is correct. I started to make that correction. I was interrupted.

Q Don't let me interrupt you now. Go ahead and complete that.

(Witness complies)

Q You are now making that correction to Exhibit SF-5-E. Is that correct?

A That is correct.

MR. GLOVER: Would you mark the corrections so that it can be identified as being made upon this exhibit? Just make a notation by it

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so we can determine that

MR. GUNDERSON: A star?

MR. GLOVER: Yes, that's fine.

A I will mark an asterisk at the southern point.

Q And so that it's clear on the record, is it the area which is lying to the east of the land that you have now drawn in Colburg's Edition on Exhibit SF-5-E that is the edition?

A That is correct. I have so marked that with NSP.

Q And that became a staff recommendation in addition to that that was indicated being submitted by NSP, is that correct?

A That is correct. As I mentioned before that was a mistake by the Staff.

Q All right. Thank you, Mr. Gunderson. Now, let's move on to the utility line which Northern States Power Company has which runs just to the north of the Country Gable Estates. I think that has been indicated some time to be an area of dispute. What exhibit among the group of exhibits numbered 5 with subnumbers clearly shows that line?

A There is no --- there has been no exhibit offered that shows clearly that line though I do have one here that I could offer. It doesn't show that line on --- that is in question. It's not on ---

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1 Q Do you have an exhibit there that would show it?  
2 A This is inside the docket. This is one that fairly,  
3 accurately reflects it.

4 MR. GLOVER: If counsel would approve  
5 I would stipulate that the docket F-3066 may be  
6 considered by this Commission at this hearing, all  
7 of the docket and testimony including the map and  
8 the exhibits included in them.

9 MR. PIERSOL: Very well, it's  
10 stipulated by and between the counsel for Northern  
11 States Power Company and counsel for Sioux Valley  
12 Empire Electric Association I think that all testimony  
13 offered by both parties to docket No. F-3066 as well  
14 as all exhibits received a  dence in this case  
15 may become a part of the full transcript in this  
16 hearing today as fully as if such witnesses were  
17 recalled and testified and if such exhibits were  
18 so entered into evidence. So stipulated.

19 MR. GLOVER: So stipulated.

20 MR. PIERSOL: Is that received then?

21 CHAIRMAN WEILAND: That is received.

22 What was that docket No. again?

23 MR. PIERSOL: 3066.

24 CHAIRMAN WEILAND: Let the record  
25 show that the testimony and docket 3066 be moved into

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the docket F-3106.

Q Now, Mr. Gunderson, I believe in your --- I believe in your earlier testimony when Mr. Meierhenry was questioning you you indicated that a portion of that line which runs just to the north of Country Gable Estates was not taken into account by you for materiality purposes due to the order which was entered by the Public Utilities Commission in that docket No. 3066, is that correct?

A That is correct.

Q And you, of course, as I believe you testified earlier, you felt that you were bound by the Public Utilities Commission's decision and that docket No. 3066, is that correct?

A That is correct.

Q And as a result of that decision then you gave no consideration to the line which is shown in green on exhibits --- strike the question. Mr. Gunderson, it would be your testimony that you disregarded all of the line that is shown in red on Exhibits C-2 from docket F-3066? You disregarded all of that line so marked in that Exhibit C-2 for purposes of materiality determination and the recommendations made by the Staff here today, is that correct?

A That is correct.

1 Q It is your contemplation in making the recommendation  
 2 that you have made today, Mr. Gunderson, that the  
 3 various utilities involved will keep the locations  
 4 designated in the various exhibits including Exhibit  
 5 No. 5 and all of its subparts depicted, whatever  
 6 change in customers there maybe to the locations  
 7 shown on those exhibits?

8 A That is correct except there is one exception that  
 9 I am not sure of at this time. It was found this  
 10 morning, and I do not know what point in time that  
 11 was initially brought to service, and that is a  
 12 body shop on the west end of --- or excuse me, on  
 13 the east side of Brandon which is served on Exhibit  
 14 5-G which comes off the point of one of Sioux Valley's  
 15 poles in this area here and serves it over this ---  
 16 NSP lines run here, serves it out in this area which  
 17 is north of the street which the Staff recommended  
 18 it be.

19 Q So then in order to summarize your testimony for  
 20 the record, Larry, would it be that in Exhibit 5-F,  
 21 SF-5-G --- strike that. Would it be your testimony  
 22 then, Mr. Gunderson, referring to Exhibit SF-5-G,  
 23 that it comes to your attention that there is a body  
 24 shop within the area which the Staff has recommended  
 25 that NSP serve, and that that body shop is one that

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you don't know when Sioux Valley started serving, is that a fair statement?

Q

My recommendation would be that when it changes ownership that service change if it was served --- if the service was initiated after March 21. Are you saying and I would assume that would be case the maps do not reflect it. So that I understand your recommendation, are you saying that if the shop, body shop in question in Brandon started to be served by Sioux Valley Empire Electric after March 21, 1975, that despite the fact that it's in an area that is to be served by NSP, that Sioux Valley be allowed to obtain the service until the ownership changes for the body shop and then Northern States Power could start to serve?

A

That would be correct.

Q

That is your recommendation?

A

Yes.

Q

Upon what do you base that recommendation?

A

Well, on the fact that the service is already there and they are customers of it and it would seem to be a way to have the service changed over without any disruption to the client.

Q

Going back to the question which brought this one incident to your mind, with the exception of this one

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incident with regard to the body shop in Brandon, with that exception and further with the large load exception which is in SDCL 49-43A, with those two exceptions was it your contemplation in making those recommendations that each utility would keep the locations you have indicated that they should serve despite any change in customers that might subsequently come about at these locations?

A Yes.

MR. PIERSOL: Thank you. I have no further questions at this time.

MR. GLOVER: I do have some questions.

EXAMINATION BY MR. GLOVER:

Q Larry, I'm going to talk to you first about this recommendation on the Wade Peterson Edition. I believe you testified that the evidence that you had was that Mr. Peterson was not being served by Sioux Valley prior to July 1, 1976, the date the law went into effect, is that correct?

A The docket shows ---

Q Or '75.

A The docket shows in the initial complaint that the service was put in approximately the 30th of June following a letter from Mr. Smith here stating that

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they had found out that the service had not actually been connected and service rendered to that customer until after July 1, 1975.

Q Would it affect your recommendation if you were to determine if the service had in fact been installed prior to the 1st of July?

A I doubt it would.

Q You doubt that it would?

A It wouldn't.

Q All right. Now, it's my understanding, of course, that Mr. --- this obviously was not a line that was in existence on March 21, 1975, is that correct?

A That is correct.

Q All right. So that wouldn't be used for drawing equidistance ---

MR. PIERSON: Are you referring to Sioux Valley Empire Electric plant?

A Yes.

Q The Wade Peterson Edition.

A That is correct.

Q And that after July 1, 1975, the date the law went into effect, is that correct?

A That is correct.

Q So that prior to this time we may assume, may we not, it was consumer's choice in rural areas?

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1 MR. PIERSOL: Objection. I think the  
2 question calls for a legal conclusion on the part  
3 of the witness and Mr. Gunderson is an engineer,  
4 but not a lawyer and that is a legal conclusion  
5 made by the Commission.

6 MR. GLOVER: The question is going  
7 to the basis upon which he has based his recommenda-  
8 tion, so I think it is fair to determine whether  
9 or not he had knowledge of that fact when he made  
10 his recommendation.

11 CHAIRMAN WEILAND: Staff.

12 MR. MEIERHENRY: I think the question  
13 is proper.

14 CHAIRMAN WEILAND: You may answer if  
15 you have knowledge of the point.

16 A The way I myself, my conclusion was the service was  
17 not in effect on the 1st of July. I was aware that  
18 there was consumer choice before the 1st of July,  
19 but I feel the question of legality of consumer's  
20 choice versus the present law, I don't feel I am  
21 qualified to answer that question.

22 Q Let me ask you this, I asked you on cross-examination  
23 if it would have been --- in other words, if it  
24 were brought to your attention or was proved to your  
25 satisfaction that service was existent and completely

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A built in prior to July 1st you said it wouldn't affect your recommendation and why is that?

A I would have based my recommendation upon the present law, that being that existing lines on March 21, 1975 on an equidistance principle in this instance.

Q All right. Now, we are talking about two different things now. We are talking about a territory and customers that are to be frozen, isn't that correct?

A Let me withdraw the question. Let me ask you this question. In all of the maps that you have drawn and based on your recommendations, have you drawn in customers that were frozen to one utility or another that may be in foreign territory?

A No.

Q Is that correct?

A Yes, sir.

Q You have drawn in the customers that may be in foreign territory?

A These have been agreed upon, customers between the utilities that they have been served prior to.

Q The customers that were being served on March 21, 1975 are frozen to the existing utility, right, the utility that was serving them as of that time?

A In the agreements that were submitted.

Q Well, under the law it is, isn't it?

1 A That is a questionable point of law. I don't feel  
2 I am entirely qualified to answer that.

3 Q In other words, some of the territory that you drew,  
4 you may have been assigning a territory to one utility  
5 and another utility might have a customer within  
6 that territory, isn't that correct?

7 A That is correct.

8 Q Because of the fact that they were serving prior to  
9 March 21?

10 A As I would understand it, yes.

11 Q Now, in regard to the Brandon area, did you apply an  
12 "equidistance" concept in your division of Brandon?

13 A Not in all instances.

14 Q And in those instances where you did not, what was  
15 the --- what application did you make?

16 A In those the reason I didn't was because it would  
17 leave some very cumbersome, what I thought would be  
18 some very cumbersome lines to work with, and in  
19 one instance it was because the property was totally  
20 owned by one person who was presently being served  
21 by Northern States Power, and in another instance  
22 it was because there was really no peaceable way to,  
23 with what material I had at hand, to draw a line that  
24 would separate properties and would not ---

25 A Did you make a determination in your examination of

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the Brandon area that were areas where the lines were intertwined so as to prevent the equidistant application?

A No, they were not intertwined.

Q They were not intertwined?

A In fact, there were probably three or four crossings at the very most.

Q So there was no situation where there wasn't intertwining of the lines in Brandon.

A That is correct.

Q In making your consideration were you familiar with the fact that petitions had been filed by a number of residents of the City of Brandon with the Commission

MR. PIERSOL: Objection, irrelevant, immaterial to these proceedings.

MR. GLOVER: He can testify as to whether or not he was aware of it.

CHAIRMAN WEILAND: You may answer it. I am overruling your objection.

A No, it's not --- at least not at the time. If I had been made aware of it I had completely forgotten about it.

Q So you did not give any consideration to petitions?

A No, I did not.

Q Now, you talked about a service station on the Bradnon

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map. I am not sure --- a body shop, excuse me. I  
am not sure what your recommendation --- what your  
change was on that. Was that an area that you said  
was not reflected on the map that was submitted?  
A The service is not reflected on the map that was  
submitted by Sioux Valley, and it appears to be  
served by Sioux Valley this morning when we looked  
at Brandon.

Q I see. And was this on any other map that you had?  
A No.

Q And if I understand you correctly, your testimony was  
that it continue to be served by Sioux Valley until  
it changes ownership?

A That was if the service was brought into being after  
March 21.

Q And what are you basing this upon, any law that ---  
A No.

Q This is just your own feelings on that?

A Yes.

Q You agree, do you not, that if Sioux Valley was  
serving that customer on March 21 that that would be  
frozen to them?

A Excuse me, will you please repeat the question.

Q You agree; do you not, if Sioux Valley were serving  
that customer on March 21 that they would be frozen

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to them?

A Yes, I would agree to that.

Q In regard to Country Gable Estates, that area, you testified that you disregarded the line in red that counsel referred to on his cross-examination?

A That is correct.

Q Is it your understanding that that was a line of 69 kv design?

A Yes.

Q You didn't consider any lines of 69 kv design in allocating territory, did you?

A To the best of my knowledge I didn't.

Q Is that --- do you know the name of that body shop?

A I am afraid I did not catch the name. I don't remember the name.

MR. BILL: Brandon Body Shop.

MR. GLOVER: I don't have any other cross-examination of this witness.

CHAIRMAN WEILAND: Mr. Piersol.

MR. PIERSOL: I have nothing further.

MRS. SEWELL: I would like to say that before this is all set and dry that Brandon did try to go to Sioux Valley and it was in court and the court decision was handed down in the fall of 1974 and I would like to give this as an exhibit. This :

the court decision that was

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MR. MEIERHENRY: Pardon me, ma'm. I don't mean to interrupt you. At a later moment you will have an opportunity to bring anything you want. Do you have any questions of Mr. Gunderson at this time?

MRS. SEWELL: Yes, I would like to know if he knew about this, and if we were hooked up illegally at the time we drew up the map.

MR. GUNDERSON: Through a previous conversation with yourself you had shown me that some newspaper clippings that there had been a court battle and you had relayed to me verbally that you felt you were hooked up illegally.

MRS. SEWELL: Did you think about petitions at all? There were petitions that were made saying that the people wish to go on Sioux Valley Electricity. Was that in your decision at all?

MR. GUNDERSON: No. As I testified earlier I had forgotten completely about those at the time I drew up the maps. If I had been aware of them at all previously.

MRS. SEWELL: Would it make any difference if the City of Brandon had a franchise to this territory at all?

1 MR. GUNDERSON: Excuse me, I don't  
2 quite understand. You mean ---

3 MRS. SEWELL: Northern States did not  
4 have a franchise for this territory and the people  
5 did not wish Northern States to be there through  
6 the petitions. I think this should all be considered,  
7 and I feel like people have been taken advantage  
8 of by --- first of all it went to court and the court  
9 case was --- a decision was made and we went to  
10 Northern States and Northern States refused to  
11 disconnect us. So I feel that although we were  
12 connected when the maps were made, we were connected  
13 illegally and I think this should be brought into  
14 the proceeding.

15 MR. SMITH: We will object to that as  
16 not proper cross.

17 MR. MEIERHENRY: I believe it should  
18 be sustained. It's more of a statement than a  
19 question.

20 CHAIRMAN WEILAND: We will have a  
21 five minute recess.

22 (Recess)

23 CHAIRMAN WEILAND: We had an objection  
24 and I will sustain the objection. And, Mark, would  
25 you be as helpful as you can. You folks do not have

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an attorney here, is that right?

MRS. SEWELL: No, we do not.

MR. BILL: I am wither and due to the lateness of the date I hope the Commission will excuse me because when we were informed of this hearing we had no time to obtain a counsel. We tried. The counsel was busy and didn't have time to prepare for us, so we are trying to do the best we can with what we have got.

CHAIRMAN WEILAND: We understand that and you are at the right place. That is why these hearings are held prior to the issuance of any final Commission decision.

MRS. SEWELL: Well, first of all there was a court case and this was the fall of '74 ---

MR. MEIERHENRY: Do you have any more cross-examination?

MRS. SEWELL: No.

MR. MEIERHENRY: We will get to you in a moment then. Is there any other cross-examination?

MR. BILL: If I may ask Mr. Gunderson a question or two. In preparation of your map within the City of Brandon, you have several maps instead of having the city all on one map. Is there any reason why you split the city up?

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MR. GUNDERSON: I am using the maps that were submitted by Northern States Power and Sioux Valley Empire Electric showing their distribution lines. These are maps that were submitted by them, not maps that were at the Commission previously.

MR. BILL: The reason I ask this question, I believe the complete map of the city which shows Sioux Valley services the largest share of it within the city limits of Brandon. Now, did I understand you right that we would have a chance up to the 30th of June to object to your recommendations? Did I understand him correctly?

MR. GUNDERSON: I don't believe that was my intention. That was the utilities had until the 30th of June to enter into agreement. That is between the two of them, between Sioux Valley and NSP.

MR. BILL: The consumer would have no chance to object other than at this hearing?

CHAIRMAN WELAND: The consumer may have a chance if we make a determination that there needs to be additional hearings. I think the statement was basically, although correct me if I am wrong, directed at the utilities and their various negotiations. But if we need to have further hearings relative to the

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1 matter that you have brought up, why we certainly  
2 will and we will have them prior to June 30 or if  
3 possible, I don't know what will happen if we can't  
4 have them before then. I just haven't any idea.

5 MR. BILL: Also, I just came --- I  
6 believe in cross-examination here, or statements  
7 made, maybe I am off base on that, you did not  
8 consider the consumer's wishes in making your  
9 recommendations?

10 MR. GUNDERSON: That is correct.

11 MR. BILL: And why not?

12 MR. GUNDERSON: The law specifically  
13 states that the electric lines, an equidistant  
14 between the electric lines is to be the determination,  
15 and since that becomes very cumbersome to draw it  
16 exactly that way, some went away from that  
17 philosophy in a few instances.

18 MR. BILL: That is all I have.

19 MR. MEIERHENRY: I just have a few  
20 questions on redirect.

21 EXAMINATION BY MR. MEIERHENRY:

22 Q One of these areas that you mentioned in making your  
23 determination, you talked about a piece of property  
24 that was fully owned by one person, is that correct?  
25 A Yes, there were three people that were involved.

1 We are talking about north of Brandon now?

2 A Yes, there are three people that are involved  
3 there, one who is completely --- would be completely  
4 surrounded by NSP, and by the equidistant ---

5 principle would be included in it, and the other  
6 two are presently served by majority --- a good  
7 portion of their territory is already presently  
8 served by NSP.

9 Q And were you considering these private ownership  
10 boundaries and natural boundaries or a natural  
11 barrier?

12 A They follow the half section line.

13 Q And is this one of the reasons that you buried the  
14 equidistance principle in those locations?

15 A That is correct.

16 MR. MEIERHENRY: I have no further  
17 questions.

18 CHAIRMAN WEILAND: Next. Anybody have  
19 any more questions relative to Minnehaha, and that  
20 is ST-5.

21 MR. MEIERHENRY: May I ask that Mr.  
22 Gundersen be excused now and any other witness who  
23 wishes to offer testimony come forward.

24 CHAIRMAN WEILAND: Very well. You may  
25 be excused if there are no further questions of this

witness.

(Witness excused.)

MRS. SEWELL: First of all, I would like to give this as an exhibit.

CHAIRMAN WEILAND: Would you start with your name and address.

MRS. SEWELL: Carolyn Sewell. I am representing the concerned citizens of Brandon, South Dakota.

(Carolyn Sewell sworn in.)

CHAIRMAN WEILAND: Would you please take a chair over there.

MRS. SEWELL: This case involves Northern States and Sioux Valley Electricity and it's --- well, you can read what it states. It states that they have both enjoyed the same privilege in the community and after this decision was made several of us went to Northern States and asked to be disconnected. This is really an exception to the rule since Brandon was incorporated and the Rural Electric Association no longer --- the boundary no longer applied as rural electric communities, so we went to Northern States and we asked to be disconnected and Northern States refused our request, and I went to a lawyer and the lawyer told me to quite paying m

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MR. PIERSON: Objection. I would have  
to object to what the lawyer might say because that  
would be hearsay.

MRS. SEWELL: Anyway, that Northern  
States refused to comply with the law. So actually  
they held off until this cut-off date of March 21.  
So actually we were illegally connected to Northern  
States after the time of the cut-off date. Therefore  
I feel like --- well, we went to petitions then and  
over 95 percent of the people that were on Northern  
States signed a petition of April 29, 1975. And I  
would like to post them as an exhibit.

MR. SMITH: We will object to the  
offer of this because this is after the cut-off  
date of March 21, 1975 and is incompetent, irrelevant  
and immaterial to any decision here.

MRS. SEWELL: Well, I think it makes  
it ---

MR. SMITH: Let's have a ruling first  
if we may.

CHAIRMAN WEILAND: We won't refuse  
it as a part of the docket. We will receive it as  
correspondence, part of the docket in the hearing.  
And go ahead now.

MRS. SEWELL: I think it should be

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brought that after this decision that Northern States did not dispute the ruling. They didn't take it to a higher court, so evidently they agreed with the ruling. And so I feel that at the time we were --- we were not connected. We had a perfect right to be a Sioux Valley customer, and another thing, the City of Brandon, the Mayor Gene Johnson has a letter to the Commissioner stating that they did not have a franchise with the City of Brandon and why ---

MR. SMITH: Now this will be objected to. Whether or not there is a franchise is immaterial irrelevant and incompetent. Franchises are not exclusive under South Dakota law and whether a utility wishes to serve without a franchise is not --- has no bearing under the law.

MR. GLOVER: I would like to comment on that. I think it is relevant whether or not the utility has a franchise in the City of Brandon because if they did not have a franchise, the city can ask them to remove their poles and wire, and that is exactly the way the law was amended to read, and although franchises may not be exclusive, it doesn't mean that they are nonexclusive. It doesn't mean they are not required to use public streets and a right of way, and I think the relevancy of whether

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1 er not they have a franchise in the City of Brandon  
2 is important because they may not, if Brandon tells  
3 them to remove the poles and wires, they may not be  
4 able to serve the people in that community be-  
5 cause if they are operating there without a franchise  
6 and they are told to remove themselves, to remove  
7 the poles and lines, and that is something that the  
8 Commission should consider.

9 MR. SMITH: We don't agree with that as  
10 a statement of law.

11 CHAIRMAN WELLAND: Is the Mayor of  
12 Brandon here today?

13 MRS. SEWELL: Yes, sir.

14 CHAIRMAN WELLAND: Why shouldn't then  
15 he offer this because he has signed it. I think  
16 that would be much more appropriate, for him to  
17 offer the letter if you don't mind.

18 MRS. SEWELL: I also feel that since  
19 we were hooked up to Northern States and they refuse  
20 us, that during this time lapse they have taken a  
21 great deal of money out of our community. Out of  
22 approximately 150 customers we pay over \$25,000 a  
23 year more than if they would be on Sioux Valley,  
24 and I think we should be refunded this money also.  
25 Of course, this is my own opinion, but that is the

way I feel about it.

MR. SMITH: That is objected to as not within the amplitude of the proceeding being held here today.

CHAIRMAN WEILAND: I am going to overrule the objection on that particular point. The Commission is interested in hearing the feelings of the people that are affected by this particular utility law.

MRS. SEWELL: Another thing I think should be the residents of Brandon and Fedora and Forestburg were given a booklet if they so requested just for these three communities. Now, I don't know why these three communities were picked out, but it seems like they have very high rates, and I mentioned before the fuel adjustment clause I think was very high and it really took out --- the people were denied due process of law since they could not regulate the rates at all through the Public Utilities Commission. They were just given high rates and I think that should be looked into. I believe that is all. Thank you.

CHAIRMAN WEILAND: Okay.

MR. GLOVER: I have a couple of questions I would like to ask her on cross-examination.

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if I may.

EXAMINATION BY MR. GLOVER:

Mrs. Sewell, you testified there was a court hearing that gave Sioux Valley the right to --- either utility the right to serve customers in Brandon, isn't that correct?

Yes, sir.

And that that was in the fall of 1974?

Yes, sir.

And then it was consumer choice. In other words, the consumer could choose the utility, is that correct?

MR. PERSOL: Objection.

Was that your understanding?

Yes, sir.

And based on that type of an understanding did you prior to March 21 request to be disconnected from Northern States Power?

Yes, we did. There were several of us who went to the company and asked to be disconnected and they refused. They said that it would foul up their lines so we went as a group and they still refused us.

And then do you recall what their response was to you?

They just said they absolutely refused to. First we went to Sioux Valley to see if they would connect

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us and they agreed with the court hearing. They said that, yes, they would connect us but they couldn't disconnect Northern State's lines. They said that was illegal. So that was why we went to Northern States and we asked them to disconnect us, but Northern States refused us. They held off. Subsequent to that time the law was passed, is that correct?

Yes, they held off until the law went into effect. I see. And if they would have volunteered to disconnect you prior to March 21, would you have --- you say you did request it?

Yes, we did.

Now, out of the petitions which you filed or mailed to the Commission, you mailed a copy of those petitions to the Commissioner, did you not?

Yes, we have over 95 percent of the people that are on Northern States.

Are there those among those that signed the petitions that had requested disconnection, the same as you did?

Yes, there were.

You don't know how many, do you?

No, I don't.

MR. GLOVER: I have no other questions.

EXAMINATION BY MR. SMITH:

Q Mrs. Sewall, who was along with you? I take it that you personally went to Northern States to ask them to disconnect?

A Yes.

Q And about what date was that?

A It was shortly after the court decision of September,

Q The fall of 1974. Who -- you went yourself. Who else went?

A Well, several of us went together.

Q Who is several of us?

A Our neighbors in our community.

Q I would like names, if you would give them, please.

A You went, you are Mrs. Carolyn Sewall.

Q Yes, Mrs. Strickers (sp) went with me.

Q Mrs. Strickers, who else?

A Just the two of us. We had -- she had some questions.

Q When you say several of you went, the two of you was the several?

A I was the responsible woman. We have people who have signed petitions that were in disagreement with them.

Q But only you and Mrs. Strickers went?

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That is all, you know, for a fact at that time.  
 Now, who is the contracted customer in the case of  
 you? Is it not your husband who is the customer  
 contracted with NSP?

I don't know. I sign all the checks.

What is your husband's name?

Harry, Jr.

And don't the bills come to Harry Sewell, Jr.?

I sign all the bills.

Would you answer my question, please. Don't the bills --

They come in his name, but I sign all the checks.

All right. And isn't it a fact -- what is Mr.

Strickers first name?

Jerry.

And isn't he the contracted customer of NSP?

Yes.

And then these petitions you have referred to were  
 filed or were delivered to NSP after March 21, 1975.

I think you said in April of 1975?

Yes.

MR. SMITH: That is all.

MR. GLOVER: I just have one question

I would like to ask. Was your trip to Northern States  
 Power to disconnect, was that request made with your  
 husband's knowledge?

THE WITNESS: Yes.

MR. SMITH: That is objected to as hearsay.

CHAIRMAN WEILAND: I will overrule the objection.

MR. GLOVER: I have no other questions.

MR. MEIERHENRY: I have a few questions.

EXAMINATION BY MR. MEIERHENRY:

Q With whom did you speak at Northern States Power?

A The man in the second row, second chair.

Q The one with the maroon tie. And did you put your request to him that you wish to change your service?

A Yes, I did.

Q And the answer which you have testified that you received from Northern States Power was from him?

A Yes, sir.

MR. MEIERHENRY: I have no further questions.

CHAIRMAN WEILAND: You don't remember the date of that, that you went to Northern States Power, do you?

A No, I don't.

CHAIRMAN WEILAND: Thank you. Anyone else have any questions of this witness? If not you may be excused.

(Witness excused.)

CHAIRMAN WEILAND: Do we have someone who would like to make a statement? Mayor, did you wish to?

MR. JOHNSON: Chairman, I guess I have no statement. I just merely submitted this letter at the request of the citizen group stating the facts.

CHAIRMAN WEILAND: Would you come forward, read it into that record, please.

MR. GLOVER: Can we have him sworn as a witness?

CHAIRMAN WEILAND: Yes, we will.

(Mr. Gene Johnson sworn in.)

MR. JOHNSON: This letter was merely written at the request of the citizen group that is testifying here today. It's merely a statement that indicates what happened in the process after Brandon became an incorporated city concerning the franchise. Would you like me to read it?

CHAIRMAN WEILAND: Please.

MR. JOHNSON: It is addressed to the Public Utilities Commission, State of South Dakota, Pierre, South Dakota. "Dear sir: In June of 1974 the City of Brandon was approached by Mr. Dennis Sunderman of Northern States Power Company concerning holding

1 an election to grant a franchise to operate within  
 2 the City of Brandon. Northern States Power Company  
 3 was given verbal approval to hold the election if  
 4 they would first present it to the City Counsel of  
 5 Brandon to take the necessary action to set up the  
 6 election. The City of Brandon never received any  
 7 further contact from Northern States Power Company  
 8 concerning the franchise election, so I must assume  
 9 that they felt it was not in their best interest to  
 10 proceed. Northern States Power Company does not have  
 11 a franchise at the present time to operate in the  
 12 City of Brandon. Respectfully yours, Gene Johnson,  
 13 Mayor."

14 CHAIRMAN WEILAND: Thank you, very  
 15 much. Questions of this witness?

16 MR. GLOVER: I would just like to ask  
 17 a couple.

18 EXAMINATION BY MR. GLOVER:

19 Q Would you first start by stating your name.  
 20 A Gene Johnson.  
 21 Q And your occupation?  
 22 A Real estate agent.  
 23 Q And are you a public officer in the City of Brandon?  
 24 A Yes, I am the mayor.  
 25 Q All right. And you are the author of the letter that

1 was just read into the record, is that correct?

2 A Yes.

3 Q To the best of your knowledge, Mr. Johnson, does  
4 Brandon have a franchise --- does Northern States  
5 Power Company have a franchise in the City of Brandon?

6 A To the best of my knowledge, they do not.

7 Q Do you know whether or not Sioux Valley Empire  
8 Electric Association has a franchise with the City?

9 A Yes, they do.

10 MR. GLOVER: I have no other questions.

11 CHAIRMAN WEILAND: Mr. Piersol, do  
12 you have some questions?

13 MR. PIERSOL: None, thank you.

14 CHAIRMAN WEILAND: Mr. Meierhenry?

15 MR. MEIERHENRY: I have no questions,  
16 but I have marked the letter that was read as SF-9  
17 and also the memoranda decision which is SF-8 which  
18 the prior witness entered into the record.

19 MR. GLOVER: For the purpose of  
20 keeping our records straight, I move that they be  
21 accepted as exhibits, your Honor.

22 CHAIRMAN WEILAND: I think that is what  
23 we better --- start over with one then?

24 MR. MEIERHENRY: We have got maps up  
25 to seven.

CHAIRMAN WEILAND: Mark one 8 and the other 9.

MR. SMITH: I object to SF-8 which is the memoranda decision on the grounds it has no relevancy in the present hearing.

CHAIRMAN WEILAND: Does Staff wish to address it?

MR. MEIERHENRY: I would urge that the Commission accept 8 for illustrative purposes only and for the Commission's reference to explain the testimony of the witness. I recommend it be received.

CHAIRMAN WEILAND: Both 8 and 9?

MR. MEIERHENRY: Yes.

CHAIRMAN WEILAND: I will note your objection and they will be received. Next. Do we have someone else who would like to make a statement? Yes, sir.

MR. KENYON: Yes, I would like to make a statement. My name is Bill Kenyon, the attorney for Bob Hildring and Bob Hildring is the original landowner of Country Gable Estates and he is also the developer of the Estates. Now, I don't know as if it's going to be necessary that I be sworn in. I am not testifying as a witness, you understand, because I am --- Mr. Hildring prior to the enactment of

1 this law, he was anxious to get electric power up  
 2 to his development and he sought out Northern States  
 3 Power because he felt that he could get better  
 4 service from Northern States Power than from Sioux  
 5 Valley, and it's my understanding that he entered  
 6 into contracts and easements with NSP and they were  
 7 NSP was all set to go up there and then there was  
 8 an objection to this by Sioux Valley Electric. And  
 9 as it stands now they have got about four, five homes  
 10 up in this development. Northern States Power can't  
 11 go up there and continue this and no one else is  
 12 going up there right now and these home owners are  
 13 in some dire need right now for electrical service,  
 14 and I would certainly hope that this thing could be  
 15 resolved pretty darn fast for the benefit of all of  
 16 the people that are now up in Country Gables.

17  
 18 MR. GLOVER: I might just make an  
 19 inquiry regarding that statement. Are you familiar  
 20 with why no one else was in there is because your  
 21 client isn't granting an easement to Sioux Valley?

22 MR. KENYON: I am not --- he is in  
 23 sort of a difficult situation. He had already  
 24 granted an easement there for Northern States Power,  
 25 SO ---

MR. GLOVER: But you were familiar ---

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are you familiar with the prior proceedings before this Commission?

MR. KENYON: I am not. I just heard that there were some.

CHAIRMAN WEILLAND: That prior proceeding has been made a part of the record, this record.

MR. PIERSOL: I have a question of Mr. Kenyon. Do you have any instructions from your client, Mr. Hildring, to state whether or not he still desires that NSP provide, if the Commission will allow the service to Country Gables Estates, his development?

MR. KENYON: Yes, he would still prefer that NSP served this.

MR. PIERSOL: What is the reason Mr. Hildring isn't here today?

MR. KENYON: He is ill. He called me this morning.

MR. GLOVER: This isn't a part of the sworn testimony of the record. He is just making a statement to the Commission.

CHAIRMAN WEILLAND: Right, yes. Thank you very much.

MR. MEIERHENRY: Do we have another someone else who wishes to make a statement at this time?

MR. GLOVER: I have a couple of witnesses

I would like to call.

CHAIRMAN NEELAND: Go ahead.

MR. GLOVER: I call Wade Peterson.

WADE PETERSON

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

EXAMINATION BY MR. GLOVER:

Please state your name, address and your occupation?

My name is Wade Peterson, Renner, South Dakota and I am a farmer.

Are you presently a customer of Sioux Valley Empire Electric Association?

Yes, I am.

When did you first go on their lines?

I don't know. It's some time in '73, '72, something like that.

And you are also in the area known as the Wade Peterson Edition or the Peterson ---

Yes, I am. That is the Peterson homestead land. We have owned it for 108 years now.

You have a development corporation there, is that correct?

Yes.

What is that development, what are you putting on

Q

is a lots set up for trailer houses, but the lots are two to three acres big and it's something a little bit different. I hate to call it a trailer court.

Q But it's built for trailer hook-up, is that correct?

A Yes.

Q And is that a flat subdivision?

A Yes.

Q And how many lots does it provide for?

A Seventeen.

Q And are you presently being served by Sioux Valley Electric Association at that location?

A Yes.

Q All right. And when did you request service at the location?

A In the fall of '74.

Q In the fall of '74?

A Seventy-three, right in there.

Q And did Sioux Valley agree to provide you service at that location?

MR. PIERSON: Objection, hearsay.

A Yes, I signed statements then.

CHAIRMAN WEILAND: I didn't --- excuse

A Yes.

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MR. PIERSOLI: The objection was a hearsay objection and that the answer be retained for the purpose of the Commission's ruling on the objection.

CHAIRMAN WEILAND: And you object on what?

MR. PIERSOLI: On the grounds that the testimony he was just about to give was hearsay.

CHAIRMAN WEILAND: Okay. I will sustain the objection and strike the answer. You requested -- you say you'd request service in the fall of 1973?

MR. PIERSOLI: That is a misstatement of the record. He said the fall of '73 or '74.

CHAIRMAN WEILAND: Would you rephrase the question?

MR. CLOVER: Well, I think he is entitled to -- I asked him whether that is what he said or not. He can say no if it isn't an accurate statement.

CHAIRMAN WEILAND: You may answer. Okay. The question is did I request for hook-up in the fall of '73?

MR. PIERSOLI: I object to that as a

...of the record.  
...is yes.  
...  
MR. GLOVER: Well, I will just rephrase

...for my recollection when  
...from Sioux Valley.  
...1974

...in and  
...you?  
...of '75.

...And do you know whether or not you had  
...service at that location prior to July 1 of 1975?  
...I did.

...at that location prior to July  
...1975, is that correct?

...I own 920 acres there.  
...in addition now?  
...in addition, right.

...is yes.

MR. GLOVER: I have no other questions.

...ask one more.

...that Sioux Valley continues serving  
...location?

....

MR. GLOVER: Thank you. That is all.

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MR. PIERSOL: May I ask that this be

(it is marked for identification)

Mr. Peterson, I will show you what has been marked for identification as SF-10 and ask you to look at

Wade Peterson's development (copies)

This is north, isn't it?

Yes.

Yes. I recognize this.

Yes. This is the drawing of the Wade Peterson development as well as some of the lines running north from that development, isn't it?

Yes, that is a picture of my development, yes.

All right. And does Exhibit SF-10 thoroughly and accurately represent to the best of your knowledge the electric lines as they were located as of March 21, 1975 as shown here in Exhibit SF-10?

I would think so.

MR. PIERSOL: All right. We would offer then Exhibit SF-10 into evidence.

MR. GLOVER: I would like to see it, if I could.

MR. PIERSOL: Sure.

MR. GLOVER: I have no objection to

this exhibit.

CHAIRMAN WEILAND: Very well.

MR. PIERSON: And Exhibit SF-10 is received, is that right?

CHAIRMAN WEILAND: That's right.

(Exhibit SF-10 received into evidence)

MR. PIERSON: I just wanted to make

sure.

Now, Mr. Peterson, do you live at this location on Exhibit SF-10?

Yes.

All right. Would you mark that with an X with the pencil here so we know where your place is?

(Witness complies)

You marked an X where your place is on Exhibit 10, is that right?

Yes.

Now, directing your attention to the bottom of Exhibit SF-10, do you have only this one development which is shown on the bottom of SF-10 or do you have other developments which are known as the Peterson development?

I don't know if it would be classed that way or not. As if I had sold property off or if I went in

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for the purpose of developing?

Let's do it this way, do you have any other area that you have platted other than what is shown as the Wade Peterson at the bottom of SF-10?

Repeat that again.

Have you platted any other areas of any land that you own all or some interest in other than that land which is shown at the bottom of Exhibit SF-10 as the Wade Peterson development?

Okay. Just off this map I have platted --- sold 30 acres. Up here I have sold 25 acres.

You sold 25 acres north of your farm place, is that right?

An old sheep pasture that wasn't any good for farming.

And when you were saying that you had electrical service to the Wade Peterson development before July 1, 1975, you didn't mean to say, of course, that there was actually current that was being delivered to any user in the Wade Peterson development as shown on Exhibit SF-10 as of July 1, 1975?

Actually used it?

That's right.

It's straight ---

You didn't actually use any is the question, by July,

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1975, did you?

Yes.

All right. Now, the line that was run to the Wade Peterson development as shown on Exhibit SF-10 was a Sioux Valley line that was run from up in front of your place all the way down to your development wasn't it?

Ahah.

MR. GLOVER: Just a minute. Answer

yes. She can't get a nod.

I got new braces. It's hard to say yes. The question again?

The line that was run to the Wade Peterson development as shown on Exhibit SF-10 was line --- a Sioux Valley line running from in front of your home place as shown by the X on that exhibit down to the development, wasn't it?

To the development plus the rest of the land in here, another 200 acres right here that was in irrigation here.

All right. Now, you are a farmer, aren't you? You farm quite a few acres, don't you?

Quite a few.

How many?

Around 2,000.

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All right. And you weren't helping actually lay the electric lines from the front of your place down to the Wade Peterson development, were you?

No.

So you don't know at what time it was that they actually got the line completely laid and the fixtures in so that service could actually be delivered to the Wade Peterson development, do you? You don't know the exact date?

No.

Actually on the 20th of June, 1975, Sioux Valley Empire Electric was still out there digging to get lines laid to the Wade Peterson development, weren't they?

MR. GLOVER: Object to as being argumentative. He has already answered the question that they had laid the service.

MR. WELAND: I will sustain the objection.

Did you see them on the --- I am not asking for the date, but I am just going to ask you if you saw when Sioux Valley Empire Electric was out there actually laying their line.. Did you observe those acts?

Did I see them laying the line or whatever they were

going?

Yes.

Yes.

When was the first time that you personally on the Wade Peterson development plugged into whatever fixtures had been placed on that development by Sioux Valley Empire Electric and for the first time used electric current on that development from Sioux Valley Empire Electric, if you know?

Oh, immediately.

He just shortly after the first of July, is that right?

Ahuh.

We have got to get the yes.

Yes.

MR. PIERSOL: All right, thank you.

I have no other questions.

MR. GLOVER: I have no redirect.

CHAIRMAN WEILAND: Mr. Meierhenry.

MR. MEIERHENRY: I have no questions.

MR. GLOVER: Okay, thank you.

CHAIRMAN WEILAND: You may be excused.

(Witness excused)

MR. GLOVER: I have one other witness

I would like to call and that is Jim Bowar.

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JIM BOWAR,

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

EXAMINATION BY MR. GLOVER:

Q State your name and address.

A Jim Bowar, Madison, South Dakota.

Q What is your occupation?

A I am director of the operation at Sioux Valley Electric in Colman.

Q How long have you held that position?

A Probably four years.

Q All right. You know Wade Peterson, do you not?

A Yes, sir.

Q And do you recall whether or not Mr. Peterson has ever applied for service with Sioux Valley Electric?

A Yes.

Q And when was that that you recall he applied for service?

A Some time the later part of 1974.

Q And at that time was any mention made concerning service to the subdivision?

A Yes.

Q Do you recall whether or not he requested service at that point?

A He did sign an application for service at that time

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Q And did Sioux Valley ---- did you as a representative of Sioux Valley agree to serve him at that place?

A Yes.

Q And was the line first installed at the Wade Peterson subdivision prior to July 1 of 1975?

MR. PIERSON: Object, leading and suggestive, improper inform.

MR. GLOVER: All right. I will lay the foundation. I withdraw the question and will lay the foundation.

CHAIRMAN WELAND: All right.

Q Did you have any direct supervisory responsibility over the construction of the line to the Wade Peterson subdivision?

A Yes.

Q Were you physically there and observed the construction of the line?

A Yes.

Q All right. And do you know whether or not the line was installed prior to July 1, 1976?

A Yes, it was.

Q All right. And --- excuse me, it was 1975, July 1, 1975.

A Yes, sir.

Q And was service available at that point at the Wade

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Peterson subdivision prior to July 1, 1975?

MR. PIERSOL: Same objection, leading and suggestive. This is his own witness.

CHAIRMAN WEILAND: I will sustain your objection.

Q All right. Can you state whether or not you know whether or not service was available?

A It was available.

Q All right. And that is prior to July 1, 1975?

A Yes.

Q Now, I am going to another area. Are you also familiar with the customers Sioux Valley serves in Brandon described as the Brandon Body Shop?

A Yes.

Q And do you recall when they were originally connected?

A No, sir.

Q All right. Do you have any idea of how long you have been serving them there?

A Several years.

Q You have been serving that location for several years?

A Yes.

Q Do you know whether or not you were serving them on March 21 of 1975?

A Yes, we were.

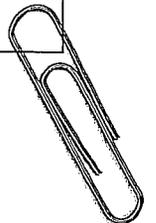
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Continuation

# 8

# of pages

EL00-026



Q And have you agreed to serve that person?

A I am not sure that we have agreed to serve him.

Q Have they requested service?

A Yes, to the best of my knowledge.

Q Is there any reason why you wouldn't serve them?

A We can not get an easement to build the line in.

Q From the owner?

A From the owner.

Q But in all instances where you have been capable of

serving a customer you are willing to serve them

if you can get easement, is that correct?

A Yes.

Q Do you have the capacity built in to serve all of

the potential customers in Country Gable Estates?

A Yes.

MR. GLOVER: All right. No other

questions.

RECALL BY MR. PIEROLI:

Q Mr. Glover, when the crew was working for Sioux Valley

Electric on putting the service to the Wade Petersen

development, were you physically present with the

crew at all times while it was working?

A I was there till midafternoon.

Q Midafternoon of what day?

A June 13.

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**NEXT**

**DOCUMENT (S)**

**BEST IMAGE**

**POSSIBLE**

So in other words, the work was still going on in the afternoon of the 30th of June when you left?

Yes, sir.

The 30th of June, 1975?

Yes, sir.

Was this a crew that Sioux Valley had contracted with or was this a crew of people that were regular employees of Sioux Valley that were doing the work?

We had the regular employees of Sioux Valley and a contractor for the plowing of the cable.

Sioux Valley doesn't have its own plow?

No, sir.

You left in midafternoon on the 30th of June then?

Yes, sir.

Do you recall offhand what day that was? Was it a Friday or Thursday or what?

I can't recall.

What is the next day, the 1st of July?

Yes, I think it was.

And you didn't work on the 1st of July?

I don't recall.

Or at least you were never back to the Wade Peterson development within the next few days following the 30th of June, were you?

Not that I recall.

Is actually from your own personal observation of the work being done on the Wade Peterson development? You don't know from your own personal observation of that development, know when the crews finished all of their work in laying the line at that development to you?

It was finished that day.

I'm asking you from your own personal observation do you know that?

Yes.

When did the crew start to work at the Wade --- start working on the project of getting the lines to the Wade Peterson development, if you know?

The actual construction was started that forenoon. On the 12th of June again?

Yes.

I am referring to Exhibit SP-10 and directing your attention to about the middle of that where there is a red X next to the line that indicates the SVEEA distribution line. To your understanding was the line for the Wade Peterson development at the bottom of this exhibit run from the mid point in this exhibit down to the Wade Peterson development?

It was run from the existing service.

And the existing service came down to where Wade

Petersen's place is shown by the X on Exhibit 10, is that right?

Yes.

This must have been a rush job to get that service in, wasn't it?

Well --

well, was it?

Yes, I would say so.

Now, didn't workmen come back after the 30th of June to finish putting in the electrical outlets and so on?

Yes, sir.

And do you know on or about what day the workmen came back to finish putting in the electrical outlets and so on?

No, I don't.

That would have been within the next couple three or four days?

I don't recall what was done shortly after the original installation.

Do you know the first date in 1975 that electrical energy was furnished by Sioux Valley Empire Electric to any portion of the location known as the Wade Petersen development? I'm asking you of your own personal knowledge.

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I can't give you that date.

MR. FERRIS: Thank you. I have no further questions.

CHAIRMAN WEILAND: Further questions of this witness?

MR. GLOVER: No.

MR. MERIENRY: I have just a few.

EXAMINATION BY MR. MERIENRY:

I am showing you a 1975 calendar and ask you what date June 13 was?

It was a Monday.

And do you or are you in charge of making out any work orders or any other internal notations for the company as to construction?

I am not in charge of the engineering.

All right. What about as far as any company memorandum as to when work is started or completed or anything like that, do you make out any document or any notations?

No specific written instructions, for instance.

MR. MERIENRY: I have no further questions.

MR. GLOVER: I have got a couple.

EXAMINATION BY MR. GLOVER CONTINUED:

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Q In, insofar as your responsibility for that Wade Peterson job, when you left the job site did you have the foreman or somebody else in charge at that time?

A Yes, the construction foreman was present. And as part of your business practice is he required to report back to you as to his progress?

A Yes.

Q All right. And also to give you reports as to whether a job is done or not completed, is that correct?

A Yes.

Q All right. And did you receive a report from your man in charge of that project as to when that project was completed?

A Yes, I did.

MR. PIERSOL: Just a moment. I ask that the answer obviously be stricken for the purpose of making an objection. Anything other than when he received the report is hearsay, not properly admissible before this body, and ask that the answer be stricken for purposes of the objection.

MR. GLOVER: We are talking about an exception to the hearsay rule. This is a business -- he has testified it's a business practice in business

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reporting and I think it is a proper exception to the hearsay rule. And my second comment to his objection is I haven't asked any question to which he can object to yet because I haven't even asked for a hearsay testimony at this point.

MR. PIERSON: You asked the question correctly, but the witness volunteered too much, and I ask what the witness volunteered be stricken for the purpose of my making an objection, and secondly there is no business record exception that applies to what has been offered here.

CHAIRMAN WEILAND: I will grant the motion to strike.

As a result of your --- was your testimony here as to the completion of the job based upon these reports?

Yes, it was. I requested a report.

And you received it?

And I received it.

MR. CLOVER: All right. I have no other questions.

CHAIRMAN WEILAND: Further questions of this witness? If there are no questions you may be excused.

(Witness excused)

CHAIRMAN WEILAND: Next?

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MR. SLOVER: I have no other witnesses to call.

CHAIRMAN WEILAND: Anything further to come before the Commission in this particular proceeding?

MR. PIERSOLI: Just a minute. I would like to confer with a person here for just a minute.

CHAIRMAN WEILAND: Yea. We will take a five minute recess.

CHAIRMAN WEILAND: Back on the record. Mr. Piersoli.

MR. PIERSOLI: Thank you for the opportunity to review the case. We have nothing further at this time.

CHAIRMAN WEILAND: Okay. I have a statement first for the purpose of further information relative to the Brandon area, the Commission has decided that a further hearing will be held, and I want to direct the Staff to cut an order setting Friday, June 27 in the evening at 8:00 o'clock for a hearing time for the purposes of further input relative to the Brandon area. That will be in Brandon. Is there a piece of hearing in Brandon? This will be to take testimony relative to the

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1 conditions and any information that the Commission  
2 might have in arriving at a boundary decision in  
3 the docket P-3106. An order will be issued accordingly.

4 Okay. Is there anything --- any other state-  
5 ments from the attorneys that you wish to make, a  
6 concluding statement, final statement or any other  
7 statements that you make?

8 MR. GLOVER: I have a couple of remarks  
9 I would like to make. I would like to also thank  
10 the Commission for the time they have spent on the  
11 hearing. I would address myself to the three  
12 exceptions. As you note, Sioux Valley has attempted  
13 and has successfully negotiated settlements in all  
14 of these with exception of those three. In the  
15 Peterson First Edition, I just want to point out  
16 that the portion of our law for Commission considera-  
17 tion and that is that we have an area where the  
18 law doesn't really address itself to, and that is  
19 that the law that went into effect on July 1 said  
20 that as of March 21, 1975, customers were frozen  
21 and lines that were in existence on that date were  
22 supposed to be drawn --- were to be drawn for equal  
23 distance. It said that it didn't, but it didn't  
24 allocate territory as of that date. That isn't  
25 going to be done until you gentlemen make a final

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decisions as to territory. And it didn't address itself to new customers coming on the line at new locations, coming an applying for service from new locations after March 21. Now, you have to fall back on the law that was in existence at that time and the law that was in existence up until the 1st of July was our old utility law that provided consumer choice in rural areas. And then of course when you get into municipals, it was within the 200 foot boundary mark and all of this, and it provided for it and we acted and I think my clients acted in good faith upon the basis that if even though, for instance, in the Wade Peterson subdivision even though we knew that would be assigned ultimately, the territory would be assigned to Northern States Power Company because of the lines, the way the equipment lines would be drawn, we had a customer that requested service and we felt a legal obligation to serve him. It was consumer's choice at that time and therefore we built in. I don't think we ought to be penalized for that because we built in under proper law at the time that we built in. And we provided service. We don't claim that we ought to be able to expand in that area or anything else. We consider that it ought to be frozen

to us just like any other customer is frozen on March 31, and I think that you have to draw a distinction as to whether or not the built in was made --- rather it was a hurry up job or not, whether or not the service was complete and built in prior to July 1, and it was under our --- under our testimony. So that is all that I want to say about that.

I would like to say on the Brandon issue that Sioux Valley has been involved in this as you can tell from the testimony. We have tried --- we had told anybody that wanted service that we would bring them service. We did --- purposely did not attempt to negotiate territory in the City of Brandon because of our commitment to the citizens of Brandon that asked us what we could do, and our feeling was this, it was a matter that had to be determined by the Public Utilities Commission. The matter that we feel has to be determined whether or not Northern States Power Company will have any rights to serve those people that wanted off their lines prior to the time this law went into effect. Obviously if that isn't going to have any effect, then we will have to be negotiating the territory from that background. If it is going to have an effect, it's going to be a very strong and major effect upon our

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negotiations with Northern States Power Company. We feel that if the Commission rules that Northern States Power Company is going to have some rights to serve customers and give us something on this basis of those people that wanted off and wanted on so we have an idea, I am confident that we can sit down with Northern States Power Company and work out an agreement as to that territory just as we have done with all of the other territories. And so, you know, you may know that in the event your hearing, whatever the results of that hearing and your decision in Brandon, we feel that we will be able to work out an agreement with Northern States Power in that area.

And then finally on the Country Gable Estates, I have nothing in addition to add other than the fact that I thought the Commission made a good decision at that time and we are hoping that you will follow through on it.

CHAIRMAN WEILAND: Mr. Piersol, I am sure you would have something now.

MR. PIERSOL: I just happen to want to address myself, Mr. Chairman, to those same three issues and I will start out with Country Gable Estates since Mr. Glover didn't talk about that very much. If I compare Country Gable to the posture that

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