

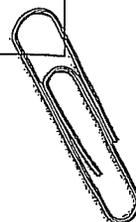
- 1 Q So in other words, the work was still going on in  
2 the afternoon of the 30th of June when you left?
- 3 A Yes, sir.
- 4 Q The 30th of June, 1975?
- 5 A Yes, sir.
- 6 Q Was this a crew that Sioux Valley had contracted  
7 with or was this a crew of people that were regular  
8 employees of Sioux Valley that were doing the work?
- 9 A We had the regular employees of Sioux Valley and a  
10 contractor for the plowing of the cable.
- 11 Q Sioux Valley doesn't have its own plow?
- 12 A No, sir.
- 13 Q You left in midafternoon on the 30th of June then?
- 14 A Yes, sir.
- 15 Q Do you recall offhand what day that was? Was it a  
16 Friday or Thursday or what?
- 17 A I can't recall.
- 18 Q What is the next day, the 1st of July?
- 19 A Yes, I think it was.
- 20 Q And you didn't work on the 1st of July?
- 21 A I don't recall.
- 22 Q Or at least you were never back to the Wade Peter  
23 development within the next few days following the  
24 30th of June, were you?
- 25 A Not that I recall.

CONTINUATION

#



# of pages



1 Peterson's place is shown by the X on Exhibit 10,  
2 is that right?

3 A Yes.

4 Q This must have been a rush job to get that service  
5 in, wasn't it?

6 A Well ---

7 Q Well, was it?

8 A Yes, I would say so.

9 Q Now, didn't workmen come back after the 30th of June  
10 to finish putting in the electrical outlets and so  
11 on?

12 A Yes, sir.

13 Q And do you know on or about what day the workmen came  
14 back to finish putting in the electrical outlets and  
15 so on?

16 A No, I don't.

17 Q That would have been within the next couple three or  
18 four days?

19 A I don't recall what was done shortly after the original  
20 installation.

21 Q Do you know the first date in 1975 that electrical  
22 energy was furnished by Sioux Valley Empire Electric  
23 to any portion of the location known as the Wade  
24 Peterson development? I'm asking you of your own  
25 personal knowledge.

1 A I can't give you that date.

2 MR. PIERSOL: Thank you. I have no  
3 further questions.

4 CHAIRMAN WEILAND: Further questions  
5 of this witness?

6 MR. GLOVER: No.

7 MR. MEIERHENRY: I have just a few.

8 EXAMINATION BY MR. MEIERHENRY:

9 Q I am showing you a 1975 calendar and ask you what  
10 date June 30 was?

11 A It was a Monday.

12 Q And do you or are you in charge of making out any  
13 work orders or any other internal notations for the  
14 company as to construction?

15 A I am not in charge of the engineering.

16 Q All right. What about as far as any company memorandum  
17 as to when work is started or completed or anything  
18 like that, do you make out any document or any  
19 notations?

20 A No specific written instructions, for instance  
21 memorandum.

22 MR. MEIERHENRY: I have no further  
23 questions.

24 MR. GLOVER: I have got a couple.

25 EXAMINATION BY MR. GLOVER CONTINUED:

1 Q Jim, insofar as your responsibility for that Wade  
2 Peterson job, when you left the job site did you  
3 have the foremen or somebody else in charge at that  
4 time?

5 A Yes, the construction foreman was present.

6 Q And as part of your business practice is he required  
7 to report back to you as to his progress?

8 A Yes.

9 Q All right. And also to give you reports as to  
10 whether a job is done or not completed, is that  
11 correct?

12 A Yes.

13 Q All right. And did you receive a report from your  
14 man in charge of that project as to when that project  
15 was completed?

16 A Yes, I did.

17  
18 MR. PIERSOL: Just a moment. I ask  
19 that the answer obviously be stricken for the purpose  
20 of making an objection. Anything other than when  
21 he received the report is **hearsay**, not properly  
22 admissible before this body, and ask that the answer  
23 be stricken for purposes of the objection.

24 MR. GLOVER: We are talking about an  
25 exception to the hearsay rule. This is a business  
he has testified it's a business practice in business

1  
2 reporting and I think it is a proper exception to  
3 the hearsay rule. And my second comment to his  
4 objection is I haven't asked any question to which he  
5 can object to yet because I haven't even asked for  
6 a hearsay testimony at this point.

7 MR. PIERSOL: You asked the question  
8 correctly, but the witness volunteered too much, and  
9 I ask what the witness volunteered be stricken for  
10 the purpose of my making an objection, and secondly  
11 there is no business record exception that applies  
12 to what has been offered here.

13 CHAIRMAN WEILAND: I will grant the  
14 motion to strike.

15 Q As a result of your --- was your testimony here as  
16 to the completion of the job based upon these reports?

17 A Yes, it was. I requested a report.

18 Q And you received it?

19 A And I received it.

20 MR. GLOVER: All right. I have no  
21 other questions.

22 CHAIRMAN WEILAND: Further questions of  
23 this witness? If there are no questions you may be  
24 excused.

25 (Witness excused)

CHAIRMAN WEILAND: Next?

1 MR. GLOVER: I have no other witnesses  
2 to call.

3 CHAIRMAN WEILAND: Anything further to  
4 come before the Commission in this particular  
5 proceeding?

6 MR. PIERSOL: Just a minute. I would  
7 like to confer with a person here for just a minute.

8 CHAIRMAN WEILAND: Yes. We will take  
9 a five minute recess.

10 (Recess)

11 CHAIRMAN WEILAND: Back on the record.  
12 Mr. Piersol.

13 MR. PIERSOL: Thank you for the  
14 opportunity to review the case. We have nothing  
15 further at this time.

16 CHAIRMAN WEILAND: Okay. I have a  
17 statement first for the purpose of further information  
18 relative to the Brandon area, the Commission has  
19 decided that a further hearing will be held, and I  
20 want to direct the Staff to cut an order setting  
21 Friday, June 25 in the evening at 8:00 o'clock for  
22 a hearing time for the purposes of further input  
23 relative to the Brandon area. That will be in  
24 Brandon. Is there a place of hearing in Brandon?  
25 This will be to take testimony relative to the

1 conditions and any information that the Commission  
2 might have in arriving at a boundary decision in  
3 the docket F-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

1 decision as to territory. And it didn't address  
2 itself to new customers coming on the line at new  
3 locations, coming on applying for service from new  
4 locations after March 21. Now, you have to fall  
5 back on the law that was in existence at that time  
6 and the law that was in existence up until the 1st  
7 of July was our old utility law that provided  
8 consumer choice in rural areas. And then of course  
9 when you get into municipals, it was within the  
10 300 foot boundary mark and all of this, and it  
11 provided for it and we acted and I think my clients  
12 acted in good faith upon the basis that if even  
13 though, for instance, in the Wade Peterson subdivision,  
14 even though we knew that would be assigned ultimately,  
15 the territory would be assigned to Northern States  
16 Power Company because of the lines, the way the  
17 equidistant lines would be drawn, we had a  
18 customer that requested service and we felt a legal  
19 obligation to serve him. It was consumer's choice  
20 at that time and therefore we built in. I don't  
21 think we ought to be penalized for that because we  
22 built in under proper law at the time that we built  
23 in. And we provided service. We don't claim that  
24 we ought to be able to expand in that area or any-  
25 thing else. We consider that it ought to be frozen

4/21

1 to us just like any other customer is frozen on March  
2 21, and I think that you have to draw a distinction  
3 as to whether or not the built in was made --- rather  
4 it was a hurry up job or not, whether or not the  
5 service was complete and built in prior to July 1,  
6 and it was under our --- under our testimony. So  
7 that is all that I want to say about that.

8 I would like to say on the Brandon issue that  
9 Sioux Valley has been involved in this as you can  
10 tell from the testimony. We have tried --- we had  
11 told anybody that wanted service that we would bring  
12 them service. We did --- purposely did not attempt  
13 to negotiate territory in the City of Brandon because  
14 of our commitment to the citizens of Brandon that  
15 asked us what we could do, and our feeling was this  
16 it was a matter that had to be determined by the  
17 Public Utilities Commission. The matter that we  
18 feel has to be determined whether or not Northern  
19 States Power Company will have any rights to serve  
20 those people that wanted off their lines prior to  
21 the time this law went into effect. Obviously if  
22 that isn't going to have any effect, then we will  
23 have to be negotiating the territory from that back  
24 ground. If it is going to have an effect, it's going  
25 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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1 Sioux Valley is now in with regard to Wade Peterson,  
 2 they are going back to the same point that we have  
 3 raised in the Hildring Country Gable proposition.  
 4 That is that prior to March 21, 1975 Northern States  
 5 Power Company had a contract with Bob Hildring and  
 6 Mr. Johnson, a contract in order to provide service  
 7 to that location. It's true that as of March 21,  
 8 1975 there was not any juice or electric power  
 9 actually flowing into that development, but the  
 10 contractual obligation existed before the 21st of  
 11 March, 1975. So we say that for that reason we are  
 12 entitled to serve Country Gables. And now for the  
 13 first time I might add, at least the first time to  
 14 our knowledge, Sioux Valley in the Peterson ---  
 15 Wade Peterson development has now adopted that same  
 16 position. I would point out from evidentiary point  
 17 of view, however, their position is not as strong  
 18 as ours although they made reference to the testimony  
 19 today to an agreement that was signed prior to  
 20 March, 1975. I didn't ever see the agreement and  
 21 when the Commission looks at the exhibits that we  
 22 have and in docket F-3066, you will see our signed  
 23 agreement in there. So evidently they are not in  
 24 as strong a position in the Wade Peterson transaction  
 25 as we are in the Country Gable transaction. But

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aside from that I think that the primary point to look at now when you talk about the Wade Peterson situation is that the law very explicitly directed itself to the kind of situation we are looking at. Section 42 of the act as passed, SDCL 49-34-32 set up March 21, 1975, and that is a statement of legislative intention and there was reason for that. That was prior to the bill being signed into law by the governor, and the reason that that date was picked was that --- so that you wouldn't have this sort of thing that you have. This is really anomalous where somebody is taking a little bit of line and they went out and put up the service before July 1 and they are taking chances and they knew it. The Commission I don't think has had much of these come before this because the reason that the legislature put that date in Section 42 was to prevent building contests from going on, so that there wouldn't be wasteful building or duplication or building going on, for ultimately once the Commission made its jurisdictional decision the utility that had put up their line after the bill was passed would have to either sell the line or not have the line go into service. So the situation we have here today is exactly the reason that date is in the

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statute, and somebody shouldn't be rewarded in my opinion for clearly ignoring the legislative intent that I think is clear in section 42. And just because they have brass enough to do it doesn't mean that they should be rewarded for doing it would be my position.

And then we move on from the Peterson situation, I will go then to the second one and that is the Brandon situation. And the Commission has indicated it has a desire to hold further hearings on the Brandon controversy and the only thing I would say at this time would be that whatever that has been done by Northern States Power to this date, we are confident has been done within the meaning and spirit of the law and that might be gone into further at the subsequent hearing. But with regard to the two that this is the last hearing on, Peterson and Country Gable, we are entitled to serve Country Gable because we had a contractual obligation to serve and that entire controversy began before --- by putting that docket number in evidence here today, and with regard to the Peterson, the first argument is they had a contract. We haven't seen very good evidence of that. Then you go to the second argument, that being they had service by July 1.

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That doesn't make any difference, and even if it did, they were not using service in the sense of having electric power going through because their witness who appeared to be candid, Mr. Bowar, said that it had the lines going but we didn't have the fixtures in, we couldn't deliver electric service, electric power on the 1st of July and they didn't. So even if you grant that they have got the lines running out there, that didn't get the electric service there, that didn't get the meters there, that didn't get the outlets there and they don't have the proof. So even if their July 1 argument was any good, which it isn't, they have got to have the evidence to support it. So they are not entitled to serve Peterson.

MR. GLOVER: I would just like to comment. I would like to draw a distinction that I think is a most decisive distinction. I see no similarity between the Wade Peterson situation and Country Gable. And the code word, gentlemen and ladies, is performance, performance in Wade Peterson. They never had a line built in there --- excuse me, in the Country Gable Estates. They never had their line built in. Prior to July 1 they did not, you know, they agreed to provide service. They had not

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**NEXT**

**DOCUMENT (S)**

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**POSSIBLE**

1 done so. There was no construction there. There was  
2 absolutely nothing there prior to July 1 when the law  
3 went into effect. In the Wade Peterson situation we  
4 had performed, we had performed substantially all of  
5 our contract and that is we did not only have it in  
6 writing yet, but it was there, available, being  
7 hooked up on his place at that time. That is  
8 performance of a contract. It was built in and  
9 available. Whether he plugged it in or not is one  
10 thing, but it was there. Now, I don't know but I  
11 think that that section 42 in the statute that we  
12 are talking about, it seems to me Mr. Piersol is  
13 having --- I don't see how he draws in that March  
14 21 on that, and the only way you can do it is to  
15 ignore this discussion of the law where it talks  
16 about service to a customer. And we have had a hard  
17 time arguing about that throughout this thing and  
18 apparently we are never going to see eye to eye on  
19 what service to a customer is, but it is our position  
20 as it has always been in the Country Gables Estates  
21 case that he, his client Mr. Hildring, they were not  
22 customers on March 21, 1975 being they were not  
23 providing service on that day. There had been no  
24 service provided to them at that location on that  
25 date, and it takes a technical reading of the law

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and I think the intention of the legislature, if you want to talk about that, was absolutely intended to freeze customers as of March 21 because they didn't want to freeze them at some future time and have a big rush of construction up to that point. But all existing customers as of March 21 were frozen, that is true, but they didn't freeze themselves to new customers coming on in areas between that time. So that is all we are saying.

MR. PIERSOL: I don't want to rehash this, but I think that is a very interesting point just made by Mr. Glover because if you take March 21, 1975 and you take his contention with regard to Peterson and you take our contention with regard to Hildring and put them both in exactly the same position, we had a contractual obligation to serve of March 21, 1975 and neither one of us had service actually running into the locations as of that time. And taking his own position, if you want to take that, that would mean that we are entitled to Hildring. Thank you.

MR. GLOVER: Is the Commission going to desire any --- you are going to come out --- be coming out with a tentative decision or are you going to require like findings of fact or anything like

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that of that nature on this thing, or permit briefs at any point in time? as I guess under the procedural aspect the way the law is set up when you make your decision I think we have an opportunity to come back to the Commission at that point, too.

CHAIRMAN WEILAND: We will go off the record a minute. are no further statements or (off the record discussion) the Commission this proceeding --

CHAIRMAN WEILAND: Do we have anything else in this proceeding to come before the Commission at this time today, sir.

MR. PETERSON: Could I just make one final statement.

CHAIRMAN WEILAND: You surely may.

MR. PETERSON: I am Wade Peterson, Renner, and REA was serving me before and this was just on --- this is phase two, but my five phase plant with their electricity and I plan on putting in irrigation as well and I do want REA to serve me if that will help you, and the exact dates now I can't remember, but I had signed a long time before this matter came up in the legislature of fighting among the utility companies and I would like it left REA, the way I am and I think on the map even after this, I think there is one of my adjoining

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2 at any point in time? I guess under the procedural  
3 aspect the way the law is set up when you make your  
4 decision I think we have an opportunity to come back  
5 to the Commission at that point, too.

6 CHAIRMAN WEILAND: We will go off the  
7 record a minute.

8 (Off the record discussion)

9 CHAIRMAN WEILAND: Do we have anything  
10 else in this proceeding to come before the Commission  
11 at this time? Yes, sir.

12 MR. PETERSON: Could I just make one  
13 final statement.

14 CHAIRMAN WEILAND: You surely may.

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18 plant with their electricity and I plan on putting  
19 in irrigation as well and I do want REA to serve  
20 me 1" that will help you, and the exact dates now  
21 I can't remember, but I had signed a long time before  
22 this matter came up in the legislature of fighting  
23 among the utility companies and I would like it  
24 left REA, the way I am and I think on the map even  
25 after this, I think there is one of my adjoining

1 pieces of ground that is actually connected together  
2 I think it is shown as Northern States. And I would  
3 like that left REA. All my land joins together.  
4 It's homestead land and I would like it left that  
5 way.

6 CHAIRMAN WEILAND: Thank you very  
7 much. If there are no further statements or  
8 questions to come before the Commission this  
9 proceeding --- I declare the hearing in this matter  
10 closed.

11 (End of proceedings)

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STATE OF SOUTH DAKOTA )  
  : SS            CERTIFICATE  
COUNTY OF MINNEHAHA )

          This is to certify that I, Kerry Lange, Court Reporter in the above-named County and State, took the proceedings of the foregoing case, and the foregoing pages 1 - 119, inclusive, are a true and correct transcript of my stenotype notes.

          Dated at Sioux Falls, South Dakota, this 28<sup>th</sup> day of June, 1976.

Kerry Lange  
Kerry Lange

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**EXHIBIT 5**

**TRANSCRIPT / OCTOBER 6, 2000 PUC HEARING**

PROCEEDINGS:

October 5, 2000  
10:00 A.M.  
Room 412, Capitol Building  
Pierre, South Dakota

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PUC COMMISSION:

Jim Burg, Chairman (**Not Present**)  
Pam Nelson, Vice-Chairman  
Laska Schoenfelder, Commissioner

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COMMISSION STAFF

PRESENT:

Rolayne Ailts Wiest  
Karen Cremer  
Gregory A. Rislov  
Martin Bettmann  
Sue Cichos  
Bill Bullard

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Reported By:

Lori J. Grode, RPR/RMR

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THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

---

IN THE MATTER OF THE REQUEST )  
 BY XCEL ENERGY FOR )  
 DETERMINATION OF ITS ) EL00-026  
 TERRITORY BOUNDARIES )

---

1 APPEARANCES:

2  
3 For Xcel:

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6  
7  
8 For Southeastern:

Mr. Robert A. Christenson

9 412 W. 9th Street, #B

10 P.O. Box 904

11 Sioux Falls, South Dakota, 57101

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P R O C E E D I N G S

(EXHIBITS NO. 1 THROUGH 14 WERE MARKED FOR IDENTIFICATION.)

VICE-CHAIRMAN NELSON: Okay. It's 10 o'clock so I think we'll get started. I will begin the hearing for Docket EL00-026, In the Matter of the Request by Xcel Energy for Determination of its Territory Boundaries.

The time is approximately 10 o'clock a.m. The date is October 5, 2000; and the location of the hearing is in Room 412 of the State Capitol Building in Pierre, South Dakota.

I'm Pam Nelson, Vice-chair, and Commissioner Laska Schoenfelder is also present. I'm presiding over this meeting. This hearing was noticed pursuant to Commission's Order for the Notice of Hearing issued September 20th, 2000.

The issue at this hearing is to determine the electric service boundary between Xcel and Southeastern in Section 7, Township 100 North, Range 50 West in Lincoln County.

All parties have the right to be present and to be represented by an attorney. All persons so testifying will be sworn in and subject to cross-examination by the parties. The Commission's final decision may be appealed to the Circuit Court and the State Supreme Court.

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Rolayne Wiest will act as Commission counsel. She may provide recommended rulings on procedural and evidentiary matters. The Commission may overrule its counsel's preliminary rulings throughout the hearing. If not overruled, the preliminary rulings will become the rulings.

At this time I will turn the meeting over to Rolayne Wiest, and she can take appearances.

MS. WIEST: Who's representing Xcel?

MR. GERDES: May it please the Commission, my name is David Gerdes of May, Adam, Gerdes and Thompson, Pierre, South Dakota, and I represent Xcel.

MS. WIEST: And who's representing Southeastern?

MR. CHRISTENSON: My name is Bob Christenson. I represent Southeastern Electric Cooperative from Marion, South Dakota.

MS. WIEST: Commission staff.

MS. CREMER: Karen Cremer for Commission staff.

MS. WIEST: Before we begin, are there any opening statements or motions? Mr. Gerdes.

MR. GERDES: I have no motions. I would just make a very brief opening statement to set the stage for this proceeding.

This is a proceeding under SDCL 34A-43 and 44 primarily dealing with the boundary of a service area as

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1 between Xcel and Southeastern Co-op. The parties have  
2 been unable to reach an agreement as to which utility  
3 should serve a certain area in Lincoln County in Sioux  
4 Falls, and so for that reason Xcel filed a petition  
5 pursuant to 49-34A-59 asking for the Commission to hear  
6 this matter.

7 It is Xcel's position that the official map  
8 approved by the Commission in 1976 is, in fact, the  
9 controlling document in this matter and that that map  
10 shows that the area in dispute is within the service area  
11 of Xcel.

12 MS. WIEST: Mr. Christenson, any opening?

13 MR. CHRISTENSON: Thank you. This hearing  
14 involves the contents of the contract that was signed  
15 really between the former NSP and now Xcel and  
16 Southeastern about 24 years ago. And what this contract  
17 does, it sets the boundaries of the service areas. And  
18 the contract also in an exhibit shows, describes where the  
19 boundary should be.

20 And also attached to the contract is a map  
21 outlining the boundary. It's our position, Southeastern's  
22 position, that the description for the boundary is not in  
23 dispute. It's very clear Southeastern has followed this  
24 description and the descriptions in this contract for  
25 many, many years and that is not in dispute.

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The testimony will show that an employee of Southeastern working in the field has followed this map, followed the direction of it, has never had a problem with it in 24 years. An expert testimony will show that the proper way to interpret the boundary and these descriptions according to what the federal government says, the state government says, all the regulations, is that the boundary is very clear it will be at a half mile line.

And there's absolutely, in our view, from our perspective, really no dispute in how to read this. And we'll have -- we'll call two witnesses, we'll have exhibits, and we fully expect to explain that. Thank you.

MS. WIEST: Commission staff.

MS. CREMER: I have nothing.

MS. WIEST: Mr. Gerdes.

MR. GERDES: Nothing further.

MS. WIEST: You may call your first witness.

MR. GERDES: We'll call Doug Berkland.

Your Honor, we have marked some exhibits prior to this matter, and I would ask counsel to stipulate that Exhibits 1 through 5 may be received.

MS. WIEST: Is there any objection to Exhibits 1 through 5?

MR. CHRISTENSON: No, there is not.

1 MS. CREMER: I have none.

2 MS. WIEST: Okay. Then Exhibits 1 through 5 have  
3 been offered and received.

4 MR. GERDES: I think everyone has copies of  
5 Exhibits 1 and 2. This would be a copy of Exhibit 5.  
6 Exhibits 3 and 4 are simply blow-ups of that which is part  
7 of the Exhibits 1 and 2. What I'm passing out is a copy  
8 of Exhibit 5 for everyone.

9 DOUG BERKLAND,

10 called as a witness, being first duly sworn,  
11 was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. GERDES:

14 Q. Would you state your name, please.

15 A. Doug Berkland.

16 Q. And where do you reside?

17 A. Sioux Falls, South Dakota.

18 Q. What is your occupation?

19 A. I'm a professional engineer and land surveyor.

20 Q. Give us your educational background, please.

21 A. I graduated from South Dakota State University  
22 with a degree in civil engineering in 1971, and since that  
23 time I've been with the firm of R.F. Sayre & Associates,  
24 consulting, engineering, land surveying firm in Sioux  
25 Falls.

1 Q. And would you outline briefly for the Commission  
2 your work experience as it relates to the issues involved  
3 in this case?

4 A. Again, I've been a land surveyor since the time  
5 that I got out of college. I immediately went to work for  
6 this firm. Part of their tasks, I guess you would say,  
7 are land surveying-related items. And with that in mind,  
8 I pursued getting a license in land surveying. And I've  
9 been working at both the engineering and land surveying  
10 since.

11 Q. Have you reviewed the contract, Exhibit 2, in this  
12 matter? Have you looked at it?

13 A. Yes, I have.

14 Q. And attached to that contract is a real estate  
15 description; is that right?

16 A. Correct.

17 Q. And then also attached to it is a map; is that  
18 correct?

19 A. Correct.

20 Q. And is it also correct that the text of that  
21 contract indicates that the map will prevail over any  
22 written description?

23 A. Correct.

24 Q. And at my request have you identified the boundary  
25 of the service area on the map that is attached to Exhibit

1 2? Have you identified the boundary?

2 A. Yes, yes.

3 Q. And would that boundary appear on Exhibit 3?

4 A. Correct.

5 Q. Would you explain what you did and why you did it  
6 in -- you prepared Exhibit 3; is that correct?

7 A. Correct.

8 Q. Okay. Would you explain what you did when you  
9 prepared Exhibit 3, please?

10 A. What we did was in order to determine the  
11 centerline, which of Section 7, which is the section in  
12 question, using the map that was furnished to us, I guess,  
13 it was to split what appears to be the section line on the  
14 north and the section line on the south to determine where  
15 that the centerline, if you use the word center, meaning  
16 equidistant from the north and from the south, where that  
17 line would go.

18 And that would be this, the southerly, or the  
19 bottom of the two dark lines that we've drawn across,  
20 which would fairly closely coincide to that heavy, dark  
21 line that separates the two different colored areas.

22 Q. All right. And then there's another darker line  
23 above that line that's labeled West 61st Street. What  
24 does that depict?

25 A. That's -- since this area has been developed, it's

1 a street that's presently exists at that location, and  
2 it's approximately a half mile to the north of the south  
3 section line.

4 Q. How did you locate what you have identified as  
5 West 61st Street on Exhibit 3? How did you determine its  
6 position?

7 A. That was determined based off the platting  
8 information that has been recorded and the subdivisions  
9 that have already been --

10 Q. And so you did measurements based upon official  
11 records of the plats; is that correct?

12 A. Correct.

13 Q. Okay. So in terms of the service area boundary,  
14 then, am I correct that you believe that the service area  
15 boundary is this lower black line on Exhibit 3; is that  
16 correct?

17 A. That's correct, using the maps that have been  
18 furnished.

19 Q. Now, you also have in front of you Exhibit 1,  
20 which has been identified as the official map on file with  
21 the Commission. You've seen that map, have you not?

22 A. I've seen -- I haven't seen this one itself. I  
23 think I've seen the blow-up of this small area.

24 Q. And this small area you're referring to is the  
25 area depicted on Exhibit 3 that you were just looking at?

1 A. Correct:

2 MR. GERDES: Your Honor, maybe just to make sure  
3 the record is clear, without calling Mr. Bettmann, can we  
4 have a stipulation that Exhibit 1 is, in fact, a copy of  
5 the Commission's official map?

6 MS. WIEST: Any objection to that?

7 MR. CHRISTENSON: No.

8 MS. CREMER: None.

9 MS. WIEST: Right, we'll have a stipulation.

10 MR. GERDES: Okay, thank you.

11 Q. And at my request, did you take a blow-up of  
12 Exhibit 1, the official map of the Commission, and place  
13 it on -- and prepare Exhibit 4?

14 A. Correct, yes.

15 Q. Would you tell us what Exhibit 4 shows us?

16 A. It shows basically we've just blown up the Exhibit  
17 1 and also at the same time have placed a large or heavy,  
18 dark line going easterly/westerly across what would be  
19 splitting the section from the south section line to the  
20 north section line, which would be the lower line of the  
21 two. And we've also placed a line where West 61st Street  
22 would go across a section as well.

23 Q. Would you tell us about your methodology in  
24 determining those two lines?

25 A. The lower of the two would be just splitting what

11/18

1 appears to be the section line. Here again, it's a  
2 photograph. So we just split the line that they have  
3 identified as supposedly the south section line and split  
4 the line that is supposedly the north section line and  
5 just using, you know, approximate methods, just by  
6 splitting those two, the distance between the two and  
7 drawing a line across and that would be the line that we  
8 have drawn, the lower of the two.

9 Q. And if I'm interpreting this Exhibit 4 correctly,  
10 that lower line is in the same place as the line which is  
11 intended to depict the service area boundary between Xcel  
12 and Southeastern on a north south -- the north/south  
13 border boundary. Would that be correct?

14 A. Correct.

15 Q. And then West 61st Street, how did you locate that  
16 on the map?

17 A. That, again, it would be off the platted  
18 dimensions that have been recorded with the Lincoln County  
19 Register of Deeds.

20 Q. So that's something that you actually measured  
21 based upon existing plats?

22 A. Existing plats.

23 Q. In the Register of Deeds's office?

24 A. Correct.

25 Q. Now, thirdly, did you also prepare Exhibit 5?

1 A. Yes.

2 Q. And for the record Exhibit 5 has been passed out  
3 to everyone. And tell us what Exhibit 5 is.

4 A. Exhibit 5 is an aerial paragraph of Section 7.  
5 The city of Sioux Falls does this regularly, yearly  
6 almost, where they fly the whole city and then you can  
7 obtain copies of aerial photos of different sections of  
8 the city. So we requested of them a copy of Section 7.

9 And what we did then was by off the aerial photo,  
10 if we have West 69th Street is located on the south part  
11 of the photo, and that's the south section line of Section  
12 7, and at the top is West 57th Street, which is the north  
13 section line of Section 7. And by splitting the  
14 difference between 69th Street and 57th Street, we then  
15 arrived at that centerline, which is a dark line that goes  
16 across the middle of the photo.

17 Q. And that's also the line that is identified as  
18 centerline?

19 A. Correct.

20 Q. Okay. And then is West 61st Street also depicted  
21 on that?

22 A. Correct, above the centerline.

23 Q. And the area that's in question here, where would  
24 that be located in terms of who provides service?

25 A. Approximately between the West 61st Street line

1 and the centerline.

2 Q. And is that the portion of the map that would be  
3 east of South Drexel Drive and north of the centerline?

4 A. It would be east of the lot line for those lots  
5 that abut Drexel Drive, and it would be north of the  
6 centerline and approximately south of the centerline of  
7 West 61st Street.

8 Q. In your opinion, then, what is the boundary -- and  
9 you may have already it said but I want you to state it  
10 clearly on the record. What is the boundary of Xcel  
11 service area in Section 7 as it relates to Exhibit 5?

12 A. All right. They would get to the -- as it relates  
13 to Exhibit 5 here, they get -- if you would relate it to  
14 the other exhibits that had been presented that identify  
15 the boundary that's been established on the photographs,  
16 they would -- their line would go to this centerline,  
17 which is virtually splitting the difference between the  
18 south section line and the north section line.

19 Q. That would be the north/south boundary of the  
20 territory area; correct? East/west?

21 A. Right.

22 Q. Dividing north and south?

23 A. Right.

24 Q. Excuse me. What would be the north/south boundary  
25 dividing east and west?

1           A.    Based on the, again on the map that the PUC has  
2 had prepared that identifies the boundary area, it would  
3 be -- it appears to be -- it would be the line that would  
4 bisect also the east section line, which is Marion Road  
5 and the west section line, which is Sundowner Avenue, and  
6 which would appear to be the line that's, oh, where the  
7 housing development has stopped going towards the east.

8           Q.    That would be the back lot lines of those lots  
9 that are east of Drexel Drive; is that correct?

10          A.    Correct.

11          Q.    Okay.  So in your opinion, then, that would  
12 constitute the same service area that is depicted on  
13 Exhibit 1; is that correct?

14          A.    Right.  Exhibit 1 identifies the service area.  
15 NSP would get everything that would be north of the  
16 centerline of the section and to the east and northeast of  
17 that line, I guess I could say, and east of the other line  
18 that would bisect the east/west, or the easterly and the  
19 westerly section lines, this area in here.

20          Q.    Okay.  Now, you're aware that Southeastern  
21 contends that the boundary is 64th Street -- excuse me,  
22 61st Street extended to the east into that service area,  
23 are you not?

24          A.    Correct.

25          Q.    And do you agree with that contention?

1           A.    I would disagree.  Because in the information that  
2 was furnished, it specifically states that in all respects  
3 the map will identify if there's a discrepancy between the  
4 verbiage that describes where the lines are to be and the  
5 discrepancy between where the map lines are drawn on the  
6 map; that the map drawing will take precedence.  And  
7 that's what this is.

8           Q.    And, again, just to reiterate, if you transferred  
9 the lines on Exhibit 1 to Exhibit 5, those lines would be  
10 as you have described depicting the service area of Xcel;  
11 that is the centerline to the south and the back of the  
12 lot line of the lots along Drexel Drive to the west, would  
13 that be correct?

14           A.    Correct.

15           Q.    Now, I anticipate that there will be testimony  
16 suggesting that there is a different way of determining  
17 the center point using a surveying convention that starts  
18 in the southeast corner of a section line.  Are you  
19 familiar with that surveying convention?

20           A.    Correct.

21           Q.    Would you tell us what that convention is, to your  
22 understanding?

23           A.    Well, normally if we go out and survey a section,  
24 if you split the section up and you determine what's  
25 called quarter sections where there would be a northeast

1 quarter, northwest, so on, you would measure the distance  
2 between each section corner at the northeast, northwest,  
3 southeast, southwest, measure that distance, split it in  
4 two, and then you would do the same on all four sides of  
5 it. And then you would go from those points that you then  
6 found and draw lines between those points and wherever you  
7 intersect those two lines are where the center of the  
8 section would be.

9 So in a normal section which is five, roughly  
10 5,280 feet, you know, you get a half mile to the north of  
11 the quarter line, or the midline of the section, and you  
12 would get a half mile to the south, or a half mile east,  
13 and half mile west.

14 This Section 7 is not a normal section simply  
15 because it's, again, it's at the north end of a township  
16 where because of the curvature of the earth, then there's  
17 got to be some surveying that needs to be done in terms of  
18 rectifying. Everything isn't going to be square because  
19 of the curvature of the earth.

20 So at the north end of the township, then that's  
21 where all the error is thrown in and that's what has  
22 happened in this case. There's -- this section is small  
23 because it is at the north end of the section -- of the  
24 township, rather.

25 Q. Let me get at it perhaps a little differently.

1 Let's just start pretty basic. What is a township first?

2 A. That would be just a unit of government -- I mean  
3 for in surveying terms, it would be six square miles.

4 There's township and ranges depending, you know -- again,  
5 it gets involved. And this is in township -- I forget.

6 It's on the bottom of one of these drawings. Township 100  
7 West, so it's just a method of determining how far west of  
8 a certain principal meridian in this case. I mean it's --  
9 it gets involved.

10 Q. Well, is it true that a township is 36 sections?

11 A. Correct.

12 Q. And is the township the basic surveying convention  
13 that is used to lay out and identify land in this part of  
14 the country?

15 A. Correct.

16 Q. And so when we talk about this section being  
17 Section 7, that is one of it is number seven in a 36-  
18 section township; correct?

19 A. Correct.

20 Q. And if you take one of those 36 sections, what  
21 does that one section consist of?

22 A. Normally one section would be a square mile in a  
23 normal section.

24 Q. Okay. Now, this particular township does not have  
25 36 sections in it, would that be correct?

1 A. Correct.

2 Q. As a matter of fact, it's missing the top tier of  
3 six sections, is it not?

4 A. Correct.

5 Q. And why is it, in your opinion, missing this top  
6 tier of six sections?

7 A. Because of this correction that I was just talking  
8 about of trying to correct for the curvature of the earth.

9 Q. So when the earth is curved, you end up with less  
10 land than if it were flat?

11 A. Flat.

12 Q. And Columbus, of course, teaches us this that the  
13 earth is round, so we can't survey on a flat surface:  
14 correct?

15 A. Correct.

16 Q. So and then this township, again if I'm  
17 understanding you correctly, is even shorter than 30  
18 sections? In other words, the next tier down from the  
19 first six is also short; is that correct?

20 A. Correct.

21 Q. And, again, is this part of this correction that  
22 has to be done?

23 A. Correct, yes.

24 Q. And so if I'm understanding you correctly, Section  
25 7 and all the other six sections in that tier are not a

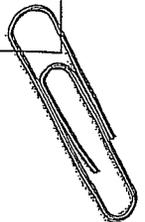
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1 full mile from south to north, would that be correct?

2 A. Correct.

3 Q. And, again, is this part of that correction that  
4 we're talking about?

5 A. Yes.

6 Q. All right. Now, does that fact -- does the fact  
7 that this is a short section tell you anything in terms of  
8 the use of the term midpoint when this contract was,  
9 Exhibit 2 was signed and the map was approved by the  
10 Commission back in 1975 or 1976?

11 A. Right. I mean when they -- I mean the language,  
12 you know, go to the centerline or center point; and, you  
13 know, as a surveyor, if a surveyor would probably have  
14 written it, it would have been written differently. It's,  
15 you know, it can be interpreted different ways.

16 And so the centerline could possibly be  
17 interpreted meaning the midpoint between two points or  
18 maybe it would mean a quarter line or whatever. So if a  
19 surveyor would have probably written it, he would have  
20 been a little more specific.

21 Q. What would the surveyor have said?

22 A. Well, if he wanted to say what has been shown on  
23 the map, that being the center point between the south  
24 section line and the north section line, he would have  
25 probably said something to the effect that instead of

1 beginning at the north centerline of which is the section  
2 line of Section 7, then south to the center point, then  
3 south to the point that bisect, you know, the section line  
4 on the south and the section line on the north, something  
5 like that that would identify, okay, you're splitting the  
6 difference. The centerline, you know, might have two  
7 different connotations to somebody.

8 Q. But you understand this to mean splitting the  
9 difference north to south? Do you understand this  
10 description to mean that?

11 A. I mean it can. Here again, it's not probably well  
12 written.

13 Q. All right. And then let me ask you the next  
14 question. Does the map Exhibit 1 split the difference  
15 however?

16 A. Yes.

17 Q. The line on the map?

18 A. Right. And that's clearly stated in the, you  
19 know, that the map shall take precedence. And because of  
20 that, then I, as a surveyor, if I had to go out and  
21 identify where that line would be, then I would physically  
22 split the difference between the south section line and  
23 the north section line with the understanding that the map  
24 took precedence and that's where that line should be.

25 Q. As a surveyor is it usual or unusual for you to

1 start with a line on a map and go find it on the ground  
2 rather than start from the ground and go to the map? Do  
3 you understand the distinction I'm drawing for you?

4 A. Right.

5 Q. If somebody hands you a map with a line on it, can  
6 you find it on the ground as a surveyor?

7 A. Depends if there's enough information on the map  
8 that identifies exactly, you know, if there's dimensions.  
9 Or in this case there aren't any dimensions but there's  
10 enough you can physically see the south section line and  
11 north section line and get a scale out. You can scale it  
12 too.

13 So it just is apparent that the person that drew  
14 that up split the difference between the two and that's  
15 where he drew his line.

16 Q. And, again, have you as a surveyor in the past  
17 performed this same function; that is, find a line that's  
18 drawn on a map and put it on the ground, so to speak?

19 A. Yes, all the time.

20 Q. Okay.

21 MR. GERDES: That's all the questions I have, Your  
22 Honor?

23 MS. WIEST: Mr. Christenson.

24 MR. CHRISTENSON: Thank you.

25

CROSS-EXAMINATION

1  
2 BY MR. CHRISTENSON:

3 Q. Mr. Berkland, let's go to what has been marked as  
4 Exhibit No. 2. And it's my understanding that's a copy of  
5 the contract that you were talking about today?

6 A. Correct.

7 Q. Have you reviewed that contract?

8 A. Correct.

9 Q. Have you reviewed all of it?

10 A. Yes, I read through all of it.

11 Q. Are you aware that there's several pages of  
12 descriptions not included in this?

13 A. Right.

14 Q. Did you read all the descriptions?

15 A. I didn't read all of them. I read those that  
16 pertained to this section, I guess, is what you could say.

17 Q. Okay. Were you aware that the language throughout  
18 those descriptions are consistent when they use the word  
19 centerline and quarter section line and all that?

20 A. Right, quarter line, center -- I got that much out  
21 of it, quarter mile line and the half mile line, that type  
22 of thing, centerline.

23 Q. Did you actually run through the description and  
24 do it on a map?

25 A. Here again, I think the description probably

1 wouldn't necessarily be exactly what's, you know, shown on  
2 your drawing. If that's what you're -- from a surveying  
3 standpoint.

4 Q. Let's just take Exhibit No. 4. If you would,  
5 please, for the Commission, meet the description and based  
6 on your experience, would you run that out on this map?

7 A. Starting beginning at the north line of Section 7,  
8 this is the north line of Section 7, okay? Then south to  
9 the center point of Section 7. So, here again, the center  
10 of Section 7, depending on whether you're -- you know, to  
11 me, I think it's that could depict a couple things.

12 Center point normally would be then, because of the  
13 Section 7 where it's at, you would give, start at the  
14 south section line, come a half mile up, and that would  
15 establish where the quarter line would be on Section 7.

16 Q. Well, let's just go through as best you can as an  
17 expert. I want you to go through that description on this  
18 map for the Commission.

19 A. Okay. Beginning at the north centerline of  
20 Section 7. Okay, so the north centerline of Section 7  
21 would be here on the north section line of Section 7. It  
22 doesn't say the northeast corner, northwest or whatever.  
23 Then south to the center point of Section 7. Well, I mean  
24 you're going south to the center point.

25 You know, I don't know what they mean by center

1 point because we began at the north line of the north  
2 centerline. I would imagine that at that point then  
3 they're saying what you want to begin at is splitting the  
4 difference between the northeast corner and the northwest  
5 corner, the north center point meaning the north quarter  
6 corner whatever is probably how we would describe it.

7 Q. Maybe we can help explain it. What was your  
8 understanding on how the term center point was used in the  
9 rest of the descriptions when you read those?

10 A. I would probably interpret that to mean from a  
11 surveying standpoint the quarter line.

12 Q. Okay. All right. Continue.

13 A. So then the center point on the north section line  
14 would be bisecting the section line at this point. So  
15 beginning at this point then south to the center point of  
16 Section 7, so then you would go south to what would --  
17 because it's Section 7, then you would probably go in  
18 normal surveying, land surveying, you would come up and  
19 establish where that quarter line would be, a half mile up  
20 from the south section line.

21 Q. Where would that line be on this map?

22 A. That would be close to the 61st Street area.

23 Q. Okay.

24 A. Then it goes south, so the center point of Section  
25 7. So it would be half, relatively equidistant, between

1 the east line of the section and the west line of the  
2 section and then a half mile up from the south line of the  
3 section.

4 So, you know, this line that they had drawn in is  
5 pretty close to where this is shown. Okay? Then east  
6 along the half mile line to the center of I-29. So then  
7 you would go east. In this case it would be up here over  
8 the center of I-29, which is, you know, this line across  
9 here.

10 Q. So the half mile line, in your opinion, trained as  
11 a surveyor, where is the half mile line on this exhibit?

12 A. In Section 7 it would be closer to where West 61st  
13 Street would be.

14 Q. And that's based on your testimony, that's the  
15 line that Southeastern is stating that it is; is that  
16 correct?

17 A. That's right. As I understand you folks are  
18 saying that based on this legal description, this drawing  
19 is in error because this line should have been moved up.

20 Q. Well, just to make clear for the Commission your  
21 experience as a surveyor, where is the half mile line in  
22 this section?

23 A. The half mile line would be more closely to West  
24 61st Street.

25 Q. Okay. Now, Mr. Berkland, it's my understanding

1 you were educated at South Dakota State as a surveyor?

2 A. Engineer and surveyor. Most of your surveying  
3 comes from, you know, just experience working with  
4 somebody who's a surveyor.

5 Q. When you were educated, were you aware of the  
6 Manual of Surveying Instructions, 1973?

7 A. I'm sure we were shown that and among other  
8 manuals that, you know, we've been taught to use.

9 Q. Are you aware of this book?

10 A. Yes, I'm aware of it.

11 Q. Okay. Would you tell the Commission the proper  
12 way to survey a section is?

13 A. A normal section you would establish the -- I mean  
14 you establish the four corners of the section.

15 Q. Well, if you will, perhaps you may want to establish  
16 the four corners of the section.

16 and let's just assume that this is a normal section here.  
17 How would you survey that for the half mile mark and all  
18 the other marks?

19 A normal section you would establish the -- I mean

20 you establish the four corners of the section.  
21 Well, if you will, perhaps you may want to establish

22 and let's just assume that this is a normal section here.

23 the other marks?

24 A. Normally we would determine the four corners of  
25 the section. We would split the difference between those  
26 four corners, here, here, here, here, split the difference  
27 here, split the difference here and connect the lines

28 between one two of them.

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3 comes from, you know, just experience working with  
4 somebody who's a surveyor.

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6 Manual of Surveying Instructions, 1973?

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8 manuals that, you know, we've been taught to use.

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12 way to survey a section is?

13 A. A normal section you would establish the -- I mean  
14 you establish the four corners of the section.

15 Q. Well, if you will, perhaps you may want to go up  
16 and let's just assume that this is a normal section here.  
17 How would you survey that for the half mile mark and all  
18 the other marks?

19 A. Normally we would determine the four corners of  
20 the section. We would split the difference between those  
21 four corners, here, here, here, here, split the difference  
22 here, split the difference here and connect the lines  
23 between the two of them.

24 Q. Okay. And then when you connect the lines, what  
25 significance is that?

A. That just established what's called the quarter line, or the half -- I mean that will establish the northeast quarter and the southeast quarter and show on it establishes in case quarter lines and then you split it up further into sixteenth lines and whatever else. So I mean it's just a method of whittling itself down.

Q. So then when you find the center point, how far is it on a normal section from the southern line to this line right here?

A. Roughly about 2,640 feet.

Q. Is that a half mile?

A. Correct.

Q. Now, when you look at this, based on your experience, is this Section 7, is that a whole section or a whole section like this, or is that what's called a fractional section?

A. Right, it's fractional.

Q. Okay. What does this book say how a surveyor is supposed to survey a fraction section?

A. Well, then you would start -- you would give the southeast quarter its due, give them a half mile both. You would give them a half mile to the north and a half mile to the east or west.

Q. Are you saying you start here and go a half mile?

A. Right, and you would give him the southeast

1/16/5

quarter would get the full 2,640 by 2,640 that he's entitled to. And then you would work your way up there and the next party or the next property north of that would get a quarter of that and then all the area would be thrown into the government lots that would be on the outside extreme of the sections.

Q. So in this exhibit it's true, is it not, that the half mile line using proper government surveying techniques, the half mile line would be 61st Street?

A. Or thereabout.

Q. Or thereabouts; isn't that right?

A. Correct.

Q. Now, again, in this contract are you aware how many times the term half mile line was used?

A. Yeah, I mean --

Q. It was used?

A. A number of times.

Q. It was used a number of times, was it not?

A. Right, right.

Q. Thank you. Now, it was my understanding that you reviewed several documents to draw your opinion; is that correct?

A. Uh-huh.

Q. Did you ever look at the original government survey of this piece of property?

A. I didn't look at the government survey, no.

Q. Were you aware that the original government survey specifically depicts this quarter section here with this line being comparable to the centerline? Were you aware of that?

A. I mean I would expect it would, you know, based on where it's at in the township and everything.

MR. CHRISTENSON: I have no further questions.

MS. WIEST: Ms. Cremer?

MS. CREMER: I have nothing. Thank you.

MS. WIEST: Commissioners?

COMMISSIONER SCHOENFELDER: I have several. First of all, when you -- I don't see -- we're talking about the maps, but I don't see a plat with any measurements on it. It's good to seeing a section that's been platted that would have footage on it.

THE WITNESS: Right.

COMMISSIONER SCHOENFELDER: And so but when you would you split 57th Street and you split 69th Street, are you sure from your -- you didn't go out and shoot this?

THE WITNESS: No, no.

COMMISSIONER SCHOENFELDER: Are you sure from the maps that 57th and 69th Street are on the section line?

THE WITNESS: Correct, they would be on the section lines, yes.

COMMISSIONER SCHOENFELDER: They would be? How do  
you know that?

THE WITNESS: Because I've surveyed enough in and  
around Bloux Falls to know that 69th Street is center,  
and that is the section line.

COMMISSIONER SCHOENFELDER: The center of the  
street always -- I mean the section line is a section  
line.

THE WITNESS: Right.

COMMISSIONER SCHOENFELDER: And we assume it runs  
from the center of the right-of-way, which would be 33  
feet on each side. I'm assuming that these streets might  
be wider than that.

THE WITNESS: Right, correct, that would be.

COMMISSIONER SCHOENFELDER: So then I'm a little  
interested in this size of this township. Number one,  
my experience tells me that correction lines on --  
township correction lines are all on the north side are  
usually, and I've never run into a case where there  
was a whole six townships that were missing.

THE WITNESS: Right.

COMMISSIONER SCHOENFELDER: Six sections in this  
area. I'm sorry, six sections.

THE WITNESS: No, this is the case in this

particular --

COMMISSIONER SCHOENFELDER: But usually the small  
ones are on the west, are the correction line on the west,  
then you're north of the Fifth principal meridian, usually  
the collection line on the west are the small quarters and  
the ones on the north of the township are the large  
quarters.

THE WITNESS: I don't know if they would be  
larger. Normally the farthest north section or the  
farthest north quarter would generally be smaller.

COMMISSIONER SCHOENFELDER: Well, that's not true  
across the state as long as you stay on this side or on  
the east side of the river from my experience. My  
experience tells me that those on the north township line  
are large quarters as high as almost an extra quarter in  
some places.

THE WITNESS: Okay. I mean you would have to look  
at the original survey, survey everything and everything  
because that would dictate, you know, how --

COMMISSIONER SCHOENFELDER: I just -- this is just  
interesting to me that there are whole row of sections  
that are missed. And trying to orient myself on this map,  
or one of the maps, I think it's -- I don't know what  
number it is, but it looks to me like this is seven.

THE WITNESS: Uh-huh.

COMMISSIONER SCHOENFELDER: Then 12 over here

would be the township adjacent so there's a township line  
line. Is there a correction line there?

THE WITNESS: There -- I mean, that would be  
starting so that --

COMMISSIONER SCHOENFELDER: That's Section 12,

THE WITNESS: The section next to it, that would  
be starting a new one.

COMMISSIONER SCHOENFELDER: But if this is Section  
12 and this is Section 7, the over tier of sections in  
that, in the township, it looks to me like this is to the  
west. If I'm reading this map correctly, and I'm not sure  
I am. Are those sections in that township missing on the  
north?

THE WITNESS: No, that's starting another. Then  
you would start out, you know, that's another here again.

COMMISSIONER SCHOENFELDER: It's another township  
but it's not another county.

THE WITNESS: It's another county too, right.

COMMISSIONER SCHOENFELDER: That answers my  
question. That's all I wanted to know. The map isn't  
clear.

THE WITNESS: Here maybe --

COMMISSIONER SCHOENFELDER: I know how you number.  
That much I figured out. The legal descriptions that are  
used in this contract do not indicate a half mile, do

36  
they? The legal description here says the center point of Section 7.

THE WITNESS: Correct.

COMMISSIONER SCHOENFELDER: And these aren't necessarily metes and balance descriptions; these are sort of calling whatever the center point of Section 7 is. There's no way to know from this agreement that I can see

what was determined to be the center point of Section 7.

THE WITNESS: I mean it's kind of a metes and bounds description in what that is the north centerline of section of the north center.

COMMISSIONER SCHOENFELDER: Well, it might be kind of, but it doesn't exactly meet the metes and bounds definition.

THE WITNESS: It should say the north center point of Section 7, the north one quarter corner or something. I mean, here again, it's probably -- I don't know who wrote it, but I don't want to offend anybody, but it's -- you know, it could have been written better and been a lot more --

COMMISSIONER SCHOENFELDER: It doesn't seem to take into account that this is a smaller or large section.

THE WITNESS: Correct. And the person who did it probably didn't realize that.

COMMISSIONER SCHOENFELDER: Well, I would assume

1      that when this is an agreement, and the assumption may be  
2      terribly wrong, that everyone had a pretty good idea of  
3      where these lines were at the time this agreement was  
4      signed.

5      THE WITNESS: And as often is the case, they might  
6      have -- instead of going through that, that not very many  
7      people understand, they might have just looked at this and  
8      said, yes, that's where it is. And, here again, I wasn't  
9      at the meetings where everybody agreed to certain things.

10      But whether they had land surveyors, I would hope  
11      that if they did maybe they didn't give them good advice.  
12      But I would have told them to be a little more specific.  
13      Then they would have noticed this legal description does  
14      not match the drawing.

15      COMMISSIONER SCHOENFELDER: Mr. Gerdes, do you  
16      have another witness that's going to testify as to how  
17      long this has been in effect and how people have  
18      interpreted this line before in the past?

19      MR. GERDES: I was going to ask Mr. Bettmann a few  
20      questions on that subject, either as part of my case just  
21      as to the adoption of the --

22      COMMISSIONER SCHOENFELDER: I'm talking about how  
23      the two companies would have either acknowledged or not  
24      acknowledged the line in practice.

25      MR. GERDES: I had not intended to do so.

COMMISSIONER SCHOENFELDER: I'm looking at the  
date of the contract, and I'm also looking at how long it  
lasted -- if that was an accepted point of demarcation for  
a period of years.

MR. GERDES: Commissioner Schoenfelder, it's our  
position that the map is the primary document. The  
statute says that. And the contract says that. And so  
we're relying on the map.

COMMISSIONER SCHOENFELDER: That's not my  
question. My question is -- I'm stating it poorly, I  
know. But do you have a witness that's going to testify  
as to whether that line was an accepted demarcation point  
for both companies for a period of years?

MR. GERDES: No. I can see if we can.

COMMISSIONER SCHOENFELDER: I just want to know if  
you've been using the existing line as an agreement over a  
period of time or not. That's the question I'm going to  
ask, so somebody needs to answer that.

MR. GERDES: Okay.

COMMISSIONER SCHOENFELDER: That's all I have.

MR. WIEST: It's your position that Exhibit 1, the  
original map, is consistent with the map attached to  
Exhibit 2. Is that correct?

THE WITNESS: That's right, correct.

MR. WIEST: Any other questions?

MR. RISLOV: Rolayne.

COMMISSIONER NELSON: Greg has one.

MR. RISLOV: Was the term half mile line or quarter mile line used to split other short sections where there were intersecting boundaries between electric utilities within this contract?

THE WITNESS: Here again, I didn't follow all of the descriptions that were given, but I know quarter line and half mile line, that type of language was used throughout.

MR. RISLOV: I understand. But in this case it wasn't on number one and number two. And I guess my question again is were they used to split short sections between utilities within this agreement?

THE WITNESS: Here again, I would have to research that.

MR. RISLOV: You don't know?

THE WITNESS: No.

MR. RISLOV: Based on the statement -- and I'm looking at Exhibit 2, and let's see what page I'm on. I believe I'm on page five. That again shown below in description of electric service area boundaries agreed upon. Do you have that page?

THE WITNESS: Correct.

MR. RISLOV: Does statement of label number one

1 ~~Does any sense at all unless you use within number two the~~  
2 ~~center point literally?~~

3 THE WITNESS: Right, no. That's why I say the  
4 ~~center~~ centerline initially when I read that as a surveyor,  
5 you know, the north centerline. It's a line, it's not a  
6 point. So the north, I assume, then they mean -- I mean  
7 it's only one section line. There's not different  
8 sections. North line of the section is what I assume the  
9 north centerline.

10 MR. RISLOV: Were you aware in 1976 of someone  
11 other than a professional surveyors developing these  
12 descriptions within this contract?

13 THE WITNESS: I wasn't aware of it. I just kind  
14 of maybe assumed that maybe somebody other than a land  
15 surveyor.

16 THE WITNESS: But you don't know that for sure?

17 THE WITNESS: No.

18 MR. RISLOV: That's all I have.

19 MS. WIEST: Any redirect?

20 MR. GERDES: Yes. Thank you.

21 REDIRECT EXAMINATION

22 BY MR. GERDES:

23 Q. I think Mr. Rislov got to the point I was going  
24 to ask you. But just to clarify, the only way you can  
25 reconcile this map with this agreement is to interpret the

Q Now center point in the description on Exhibit 2  
knowledge isn't that true?

A Correct. I mean I would probably use the map and  
the descriptions together to decide, okay, this is what  
the description means. When you're saying then south to  
the center point of Section 7, looking at the map, then I  
would say that probably is based on the map.

Q But what this person is depicting is the point  
that's equidistant from the south section line and the  
north section line. That, to him, means center point.

A And then if you go to subparagraph three and that  
description, it says east along the half mile line. The  
only way that that half -- that statement can be  
correlated with the map is to assume that the person  
writing the description didn't know it was a short  
distance. Wouldn't that be true?

A Correct. He just assumed that that center point  
of a section is always described as the half mile line.

Q Okay. Is it your understanding that when the  
Public Utilities Commission approved the official map,  
Exhibit 1, that there was a hearing held and that each  
party was asked to identify those areas on the map and  
tell the Commission that that's, in fact, what their  
position was at that hearing?

A I believe that. I didn't know that.

Q. You're not aware of that?

A. No, I'm not.

Q. Thank you. So to make the final point, there's no doubt that this description, if read by a surveyor applying surveying conventions, cannot be reconciled with the map as approved with the Public Utilities Commission -- by the Public Utilities Commission; correct?

A. Correct. I think a surveyor, if he was going to have to go out and survey this description, would perhaps have to sit down with the parties that wrote it to get a better understanding of just what they meant by some of this language just so that everybody understands, okay, here's where I'm going to begin, here's where we're going to go to and do that type of thing.

Q. But is there any doubt in your mind that the map depicts an east/west line that is the north/south boundary between the two halfway between the top of Section 7 and the bottom of Section 7?

A. That's very apparent that that's what the intent of the map is.

Q. Okay. And, again, if you look at the contract, on the third page of the contract at the top, it clearly says that the written description is not controlling and at any time?

A. Correct.

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

2 MS. WIEST: Any further cross, Mr. Christenson?

3 MR. CHRISTENSON: Yes.

4 RE CROSS-EXAMINATION

5 BY MR.

6 Q. I'm a little confused now about our prior  
7 discussion. It's my understanding you testified that you  
8 knew that this was, in your experience, this is a  
9 correctional section; is that correct?

10 A. Correct.

11 Q. And also I asked you to go down the description  
12 and you did it, did you not?

13 A. Uh-huh.

14 Q. Should we do that again? You didn't have any  
15 trouble doing that, did you?

16 A. We can do that.

17 Q. Let's do that again.

18 A. Okay. Here again, like it's saying the north  
19 centerline of -- I don't know the north centerline.

20 Q. Well, as a surveyor --

21 MR. GERDES: Just a minute, you're interrupting  
22 the witness. He was answering your question. I object.

23 MR. CHRISTENSON: Excuse me, he wasn't answering  
24 my question.

25 MS. WIEST: Go ahead, ask the question again.

MR. CHRISTENSON: Thank you.

Q. As a surveyor, what is the north centerline?

A. Well, I assume that by that they would mean the north quarter corner, which would split the section.

Q. The north quarter corner?

A. Right.

Q. You didn't have any trouble ascertaining that as a surveyor, did you?

A. I mean, here again, I think if a surveyor would have written it, you probably would have said something different. But looking at the drawing and everything, I can see where the north centerline, you know, the north center point on the north line or something. Maybe that would state it a little better.

Q. What does the document say?

A. The north centerline of Section 7.

Q. Can you find that on this map?

A. Well, looking at the map, I would say then the north centerline. I mean the north centerline. I mean I'm just going to say that they mean -- I mean it's a point. So but then south, then south to the center point, so I mean --

Q. I understand. What does this blue line represent?

A. That blue line would represent -- here again, what I had to do was just split this, you know, with a scale to

and this appears to be, you know, the quarter line and then this line here up appears to be splitting the difference between the two section lines.

Q. Okay. Let's begin again. Go where the north centerline is and let's just run down their description.

A. Okay. The north centerline. Okay, we'll just assume that's the point on the north section line.

Q. Okay.

A. Then south to the center point of Section 7. So, here again, this line would probably, as we had talked about earlier, based on the next one and then half mile line, assume that person meant along the quarter line, which would be more in tune to the 61st Street line.

So then if that was the case, to have this map with the lines depict more closely maybe what this legal description is trying to state, then this line would in effect have been moved up here.

Q. Now, call number three on that description reads as what?

A. East along the half mile line to the center of X-29 in Section 7.

Q. Okay. On this fractional section where is the half mile line?

A. That would be closer to the 61st Street.

Q. And there's no dispute about that, is there?

A. Right, no.

Q. In fact, there's really no dispute about this legal description, is there?

A. Well, I don't think it's -- that part, that first part isn't very well written. I mean you can -- you know, if somebody -- that's why we're here because there's a dispute between I think what this is versus what is drawn on the map. The two of them don't coincide.

Q. But just forget about the map. You didn't have any trouble running this out, did you?

A. No, I think you can. It's not -- I mean it isn't as clearly as if a surveyor would have written it. You could have certainly followed it a little easier. You have to study it a little bit.

Q. You can do it, can't you?

A. Yeah.

Q. In fact, the matter is this same language was used throughout that contract, was it not?

A. Right.

Q. And are you aware of any other dispute in this contract?

A. Not that I'm aware of.

MR. CHRISTENSON: I have nothing further.

MS. WIEST: Ms. Cremer?

CROSS-EXAMINATION

BY MR. CHAMBER:

Q. If I understood what you were talking to Mr. Christenson about, the only way you can run this using the legal description, you're making a lot of assumptions because it's not written in normal surveying terms?

A. I think it could have been written a lot easier; that a person would have been able to -- a surveyor would have been able to look at it and been able to do it a lot easier and without what we're going through if it would have been written better.

Q. Right. But I guess my question is but you're making a lot of assumptions as to what is the north center point because you're not 100 percent sure of what they're talking about because it's not written like you would normally see; is that right?

A. I mean a lot of times we do see it like this, which makes it more complicated. Because I think there's a lot of people writing legal descriptions that don't know what they're writing, and I think that was the case here.

Q. Right. So you're making some assumptions, a number of assumptions from what I understood?

A. Yeah. I think -- I mean what the person -- if the same person who drew it wrote it, you know, if that's what

you're going to assume, then, you know, then you're going to assume something different than maybe what I would have.

MR. CREMER: Right. Thank you.

MR. WIEST: So if you only had the written description and had no maps, you would have put the half mile line near 61st Street; is that correct?

THE WITNESS: Right, correct.

MR. WIEST: Any other, Commissioners? Mr. Gerdes?

MR. GERDES: One last point.

FURTHER REDIRECT EXAMINATION

BY MR. GERDES:

Q. I'll show you what's been marked as Exhibit 3. And is it your understanding that's a blow-up of the map that was attached to Exhibit 2, which was part of Exhibit 1, the contract that we've just been talking about for some time?

A. Correct.

Q. And is it also your testimony that the line as drawn on that map also is not consistent with the legal description?

A. Correct.

Q. But it is consistent with your conclusion that the line is at the midpoint of Section 7, not the half mile line; is that correct?

1 A. I would say when the person who wrote this, if he  
2 said the center point, to him the center point meant the  
3 center, which you and I would then say it's equidistant  
4 from the north and the south, that's the center.

5 Q. So, again, to answer my question, it's your  
6 conclusion, then, that Exhibit 3 and the map that was  
7 attached to Exhibit 2, the contract, cannot be reconciled  
8 with the description in the contract, would that be  
9 correct?

10 A. Correct.

11 Q. So we have to decide which is the correct place  
12 for the line based on something; correct?

13 A. Right.

14 Q. And you chose to believe the map that was attached  
15 to the contract; is that correct?

16 A. That's what the contract says. In all cases the  
17 map would be the controlling factor.

18 Q. And you also chose to believe the map, the  
19 official map that was adopted by the Public Utilities  
20 Commission in 1976, which also depicted the line as being  
21 the line that is equidistant between the top and bottom  
22 lines of Section 7; correct?

23 A. Correct.

24 Q. Are you satisfied with that conclusion based on  
25 all that you know?

1 A. Based on what I know, because the legal  
2 description being written as it is and without being able  
3 to talk to the person who wrote it to see what his intent  
4 is. But if the same person wrote it drew the picture,  
5 then his interpretation of what the center point is and  
6 the half mile line would probably be different than what a  
7 surveyor would say.

8 Q. So, again, I asked if you were satisfied with your  
9 conclusion?

10 A. Right, I'm satisfied that the map is the  
11 controlling document and, therefore, it appears that he  
12 just split the difference between the two section lines.

13 Q. Okay. And if the map is the controlling document,  
14 and if you look at Exhibit 5, the picture, then is it your  
15 opinion that the proper line is quite a bit below 61st  
16 Street and is, as a matter of fact, as depicted on Exhibit  
17 5?

18 A. That's correct.

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

20 MS. WIEST: Any further cross, Mr. Christenson?

21 MR. CHRISTENSON: Just one.

22 FURTHER RECROSS-EXAMINATION

23 BY MR. CHRISTENSON:

24 Q. It's true, is it not, Mr. Berkland, that the only  
25 line on this map that can be derived from the legal

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Description is this one right here that says West 67th --  
61st Street; is that correct? ✓

A. From the legal description, I would say correct.

Q. Thank you. And now this line you put in yourself,  
didn't you?

A. Yeah, right. We drew that in to split the  
difference between the top section line and the bottom.

Q. But the legal description clearly points to this  
line; isn't that correct?

A. Legal description, I mean, to me it isn't clear.  
I mean, I think it could have been written better. But if  
you were to wade your way through it, it probably would  
refer to the 61st Street as being what they interpret to  
be the center point.

Q. Or what the -- more clearly, aren't we referring  
to the half mile line?

A. The half mile line, which would be right here.

Q. That's in the legal description?

A. Right.

Q. Thank you.

MS. WIEST: Miss Cremer?

MS. CREMER: Nothing.

MS. WIEST: Commissioners?

Just one more question. If the contract had not  
said the map was controlling, would you rely on the

written description or the map?

THE WITNESS: If the contract didn't say the map?

MS. WIEST: Was controlling.

THE WITNESS: Then probably I would have wanted to sit down with the parties involved and work something out. I think that's part of a surveyor's job, too, that if you run into a dilemma, then you go out and get as much evidence as you can. And certainly part of the evidence would have been, okay, what was the intent at the time of the contract. Was the intent to go with the map? Or was the intent to go with the legal description? Was the legal description intended to mean exactly what the map shows but it was just poorly said?

And that's probably what I would say is whoever wrote it did a poor job of saying what he intended to say on the map because then he clarified himself and says, okay, if he didn't say it. But this is probably what you would probably interpret him to say. Okay? If my legal description is wrong in all cases, I want you to say look at the map and that's going to be the controlling lines.

MS. WIEST: Any further redirect?

MR. GERDES: I have none. Thank you.

MS. WIEST: Did you have one? Do you have any further witnesses?

MR. GERDES: I'd like to call Martin Bettmann just

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**MARTIN BETTMAN,**

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

DIRECT EXAMINATION

BY MR. GERDES:

Q. Would you state your name, please.

A. My name is Martin Bettmann.

Q. And where do you reside?

A. I live in Pierre, South Dakota.

Q. And where do you work?

A. I work for the Public Utilities Commission.

Q. And what is your position with the Public  
Utilities Commission?

A. I'm a staff engineer.

Q. I've heard you described as the keeper of the  
maps. Would that be a correct description?

A. Yes, I've been called that.

Q. And is Exhibit 1 one of the maps that you keep, or  
a copy of one of the maps that you keep?

A. I was gone when they made the copy, but it  
accurately reflects the original, yes.

Q. And so Exhibit 1 would accurately reflect the  
original map which is on file in your office; is that

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Correct?

A. Right.

Q. And what does Exhibit 1 depict?

A. It's -- it states on there official electric territory map. I wasn't around when they were drawn, but I'm aware of how they came about.

Q. All right. And would you please tell us for the record how it was that this map came into being?

A. It was my understanding that the utility companies filed an agreement map such as you have been referring to in Exhibit 2 that was attached to Exhibit 2, I believe. The one that's up there. Those type of maps. They submitted those to the Commission. I think that's Exhibit 3. They submitted those to the Commission.

The staff people at that time of the Commission then drew up what was the official electric territory map, and they took those to a hearing and everybody said -- you know, had a chance to observe, look at them, and they would agree yes or no. Sometimes they were amended after that and then the Commission would approve those.

Q. So the process that this map went through was that the electric utilities submitted maps to the Commission in 1975, 1976, that area; correct?

A. Right.

Q. And then as to this specific map, Exhibit 1, there

17 would have been a hearing; is that correct?

18 A. There were hearings in half a dozen towns across  
19 the state.

20 Q. As I understand it, the Commission would have  
21 basically said to the parties take a look at this map,  
22 tell us it's correct; is that correct?

23 A. That's -- from reading the transcripts from those  
24 hearing, that's my understanding how it was done.

25 Q. All right. Then after the map was looked at and  
26 the parties said it was correct, the Commission then  
27 entered an order approving that as the map; is that  
28 correct?

29 A. That's correct.

30 Q. And that map is the map that's contemplated by  
31 SDCL 49-34A-44; is that correct?

32 A. I don't have 44 memorized, but I assume that's  
33 what you've got. Correct.

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

35 MS. WIEST: Go ahead.

36 MR. CHRISTENSON: May I proceed, Your Honor?

37 MS. WIEST: Yes.

38 CROSS-EXAMINATION

39 BY MR. CHRISTENSON:

40 Q. Let's see, Mr. Bettmann, is it your -- first of  
41 all, on Exhibit 1, would you point out to the Commission

where on this map, if at all, it states the distances between points and how far this is and that is on this map?

A. There's a scale down in the lower right-hand corner. That's the only reference to distances on there.

Q. Okay. So the only legend on this map is in the lower right-hand corner; is that right?

A. Right.

Q. Now, is it your understanding that, for instance, all the lines, the blue lines on this map are drawn exactly to scale based on that legend there?

A. As close as you can draw them considering the scale. It's -- he didn't use a very sharp pencil.

Q. What's your understanding how accurate are these where these boundaries are supposed to be?

A. My experience they're -- I usually go back -- when I look at these, I always hope there's a written agreement to go along with them because they're not always what you would assume to be a quarter line or 16th line. It doesn't always scale out to that. And if there's absent an agreement, that's what you assume they are, unless without any other knowledge, that's what I would go by.

Q. But it's not your testimony today, is it, that these blue lines on this map are accurate, down to the foot?

1 A. Well, obviously not because of the scale.

2 Q. Yes. In fact, have you ever taken that contract  
3 and gone through this, the description, and worked that  
4 out on the map?

5 A. Yes, I did.

6 Q. Which ones did you do?

7 A. Which part as far as which sections?

8 Q. Yes.

9 A. I looked at all of them along that north tier.

10 Q. Okay. So you actually, with this map, went  
11 through the first three calls?

12 A. Right.

13 Q. Okay. And what you did, is it not, is you went to  
14 the center of the north line; is that correct, the north  
15 section line?

16 A. Yeah, right.

17 Q. Okay. And then on this map what did you do next?

18 A. That's where I got confused because it went down  
19 to the center point, and that's, you know -- but then when  
20 on the third line where it says it goes east on the half  
21 mile line, obviously looking at it, it's not a full  
22 section so it's not a half mile line in my mind.

23 Q. So this map really didn't do you any good, did it?

24 A. That's why we're here, I guess. They were asking  
25 about it. I said I'm not sure.

MR. CHRISTENSON: All right. I have nothing further.

MS. WIEST: Ms. Cremer?

MS. CREMER: I have nothing.

MS. WIEST: Commissioners?

COMMISSIONER NELSON: I have nothing.

MS. WIEST: Mr. Bettmann, is there any written Commission order approving this contract and map?

THE WITNESS: I'm not sure there is.

MS. WIEST: Would we have it?

THE WITNESS: Probably have it on file, in my files.

MS. WIEST: Would there be any -- do you have any knowledge as to whether there's any transcript of perhaps a hearing that would be held on this particular contract?

THE WITNESS: Probably a microfilm, it's probably on microfilm. I'm not sure we have complete transcripts of all the hearings that were held. If we do have one it's on microfilm.

MS. WIEST: Would there be any objection if we could get the actual Commission decision approving this as an exhibit?

MR. GERDES: We'd move that the Commission take judicial notice of the proceedings approving the Exhibit 1 and the contract.

1 MS. WIEST: And if we assume we could, if we could  
2 get the Commission decision and give that to everyone,  
3 would there be any objection to putting that in as an  
4 exhibit?

5 MR. GERDES: None.

6 MR. CHRISTENSON: No, Your Honor.

7 MS. WIEST: Could we put that as exhibit -- or 15?  
8 So that would be the written Commission decision approving  
9 this particular contract and map.

10 THE WITNESS: It might not specifically say this--

11 MS. WIEST: May be just one.

12 THE WITNESS: If I remember the wording right and  
13 a lot of those -- I'm not specific for Sioux Falls, but a  
14 lot of times it will -- they would take a county map and  
15 they would say everybody -- you know, have everybody look  
16 at it and then ask are they in agreement. They would say  
17 yes, and then they would go to the next one, and then at  
18 the end they would approve them all.

19 So they wouldn't go map by map necessarily. It  
20 would be all the maps for that area in that, you know, the  
21 Sioux Falls they did, I think, Minnehaha, but they Turner  
22 and Lincoln and Hutchinson and whatever other counties  
23 around there. And they would approve them all in one  
24 item, not specific exhibits.

25 MS. WIEST: Can you get it today, do you think?

1 THE WITNESS: If I have the agreement in my files  
2 I can get it today. If it's on microfilm, it would be  
3 later in the day.

4 MS. WIEST: Right. Any other questions?

5 MR. RISLOV: Martin, did you draw the blue lines  
6 in on this map?

7 THE WITNESS: No, I didn't,

8 MR. RISLOV: Were they there? Does someone else  
9 do it?

10 THE WITNESS: I believe my predecessor, Larry  
11 Gunderson, was involved in drawing these; and I don't know  
12 who helped him with it, but he's the one I know of.

13 MR. RISLOV: So were these blue lines drawn at the  
14 culmination of the hearing which established these  
15 boundaries?

16 THE WITNESS: I'm assuming they were drawn before  
17 they took these maps to the hearing.

18 MR. RISLOV: And this is what was approved by the  
19 Commission?

20 THE WITNESS: Right.

21 MR. RISLOV: What do you believe the boundary line  
22 is?

23 THE WITNESS: Like Mr. Berkland says, depends upon  
24 if you interpret it literally or if you do it as a  
25 surveyor. You know, you've got -- I had the same problem

1 that he has. If you read it, it's poorly written, okay?  
2 I agree with him, it's poorly written. And if you, you  
3 know, literally center point, you would divide it in  
4 fours.

5 MR. RISLOV: What about the map?

6 THE WITNESS: The map, it's drawn to the center,  
7 the physical center of the section.

8 MR. RISLOV: Where do you believe the service  
9 territory boundary is?

10 THE WITNESS: Then we have to go to the agreement.  
11 If you assume the agreement says go by the map, you know,  
12 then it's the center. There's -- it -- I guess I'd have  
13 to say the physical center, you know, there's some  
14 other -- I don't know if I'm/ there's some guidance in the  
15 law on how the Commission was supposed to divide these up  
16 when the companies couldn't agree. You divide it in half.

17 It doesn't say go to the section line or half mile  
18 line. You know, when there's two lines that are -- if a  
19 company had a line on the north boundary line, and the  
20 other company had -- there's a south section line, north  
21 section line, you know, they were supposed to go halfway  
22 if they couldn't agree. And that was they tried to draw  
23 these. I'm sure that's what they tried to do in a lot of  
24 these, they went the halfway and that's what they've  
25 proposed and that's how they came up with some of these.

1 MR. RISLOV: There were questions asked before --  
2 I can't remember by whom. But how accurate are these maps  
3 with regard to scale? Do you recall those questions?

4 THE WITNESS: Yes.

5 MR. RISLOV: Well, following along that line, if  
6 you look at this line drawn, who's boundary do you believe  
7 this supports, Southeastern's or Xcel's?

8 THE WITNESS: I would support Xcel's.

9 MR. RISLOV: That's all I have.

10 MS. WIEST: Any redirect?

11 MR. GERDES: I just have one question. And this  
12 is just a follow-up to Mr. Rislov's question.

13 REDIRECT EXAMINATION

14 BY MR. GERDES:

15 Q. But if you look at the map that was attached to  
16 the contract, Exhibit 2, and if you scale out that  
17 east/west line that forms the north/south boundary, it  
18 depicts the centerline, does it not, on that map that was  
19 attached to the contract?

20 A. The physical center, yes.

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

22 MS. WIEST: Any further cross?

23 MR. CHRISTENSON: Yes. I'd like Mr. Bettmann to  
24 come up to this exhibit with me and bring Exhibit 2,  
25 please.

RE-CROSS-EXAMINATION

BY MR. CHRISTENSON:

Q. For the Commission, would you go to the page where the calls are pertaining to this? Now, would you take the Commission through each step of that and exactly how you did it?

A. I'll have to admit I had some of the same confusion as to where the north centerline. But when you read the next one, it says south of the center point, obviously to mean you have to start at the what I would call the northeast quarter corner on the north section line. You go south to the center point, which if you scale it, you know, it's -- but it gets confusing when it then says go east along the half mile line. This since this is a short section, it's not true half mile line.

Q. Where is the half mile line on this?

A. Surveying experience, it's approximately West 61st Street.

MS. CREMER: Martin, just for the record, I think you're going to need to be more distinctive as to that top line and that bottom line because you're pointing but the court reporter, you know, well, there's a thick line on there and there's two thin lines and a top line, I mean. But when you're pointing at them, I think you guys need to be a little more specific.

1 A. It says when you go south to the center point,  
2 that would be down here on this thick line that is shown  
3 here. This would be if you go by the literal description.  
4 But then on the next line it says the east, then east  
5 along the half mile line.

6 That, to me, this thick line is not the half mile  
7 line based on it actually should be to the 640 feet north  
8 of this centerline, which would be approximately 61st  
9 Street, which is this line up here.

10 Q. So let's just assume that that's right, this is  
11 the half mile line. Then isn't it true that this line,  
12 this bold line, should be from this point east; isn't that  
13 correct?

14 A. Where it should be, I don't know, because, you  
15 know, I don't even know if the person who wrote this drew  
16 the map.

17 Q. Then you really can't testify that this favors  
18 Xcel, can you?

19 A. Only if you go by if you say that the contract --  
20 where it says in the contract you have to go by the map  
21 and forget about the written description.

22 Q. But if you use the legal description, it's true,  
23 is it not, that it doesn't favor Xcel; is that correct?

24 A. That's correct, by the legal description.

25 MR. CHRISTENSON: I have nothing further.

MS. WIEST: Ms. Cremer?

MS. CREMER: I have nothing.

MS. WIEST: Commissioners?

COMMISSIONER NELSON: I have one. Martin, you're saying -- I want to be sure I'm understanding what you say. You say, though, and I agree, that the contract says the map controls this decision. I mean two parties agree. And the contract, their agreement was that the map would rule. And if the map was the governing factor, do you believe it favors Xcel's position?

THE WITNESS: Correct.

COMMISSIONER NELSON: Thank you.

MR. GERDES: One final question.

FURTHER REDIRECT EXAMINATION

BY MR. GERDES:

Q. If a lay person was looking at the map, didn't have the written description in front of them, just was looking at the map -- and I'm talking about the one that's attached to Exhibit 2, this one -- and they didn't know Section 7 was a short section, then that description would be understandable, wouldn't it, that's in the contract? If they drew the description, if they wrote the description based upon the map, then you could understand how that description got written, couldn't you, if they didn't know that seven was a short section?

1 A. Right.

2 MS. WIEST: Any further questions? Thank you.

3 COMMISSIONER NELSON: I have one more. Martin,  
4 are you also saying that you believe that the map that the  
5 Commission approved was approved in agreement with the  
6 directives we had when we approved those maps?

7 THE WITNESS: I believe so, that's right, yes.

8 COMMISSIONER NELSON: Thank you.

9 MS. WIEST: Any further witnesses, Mr. Gerdes?

10 MR. GERDES: I have one witness very briefly. Jim  
11 Wilcox.

12 JIM WILCOX,

13 called as a witness, being first duly sworn,  
14 was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. GERDES:

17 Q. Would you state your name, please?

18 A. Jim Wilcox.

19 Q. Where do you reside?

20 A. Sioux Falls, South Dakota.

21 Q. Where do you work?

22 A. Xcel Energy.

23 Q. What is your occupation, or what is your job  
24 position?

25 A. I'm a manager of government and regulatory

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Commissioner Schoenfelder asked what the practice was with respect to this, I'll just call it the area in dispute now. I refer you to Exhibit 5. What is your understanding of whether there was ever any dispute as to service to that area in the past?

A. I am not aware of any.

Q. And as far as if there was or was not a practice of adhering to particular lines, would that be because there's no service in that area at this point, or what?

A. I believe that to be the case, that this is a farm field that's now being developed.

MR. GRODE: That's all I have.

MR. CHRISTENSEN: No questions.

MR. WISSET: Mr. Cremer?

MR. CREMER: No.

MR. WISSET: Commissioners?

MR. WISSET: So in the disputed area there's no electrical service currently in that area; is that correct, in the entire disputed area? For example, if you draw the line on the 61st Street, as I believe Commissioner is contending that entire area is unserved?

THE WITNESS: I'm not aware of service in that area between 61st Street and West Bakker Park Drive at the

THE WITNESS:

MR. WIEBT: Thank you.

COMMISSIONER SCHOENFELDER: Now, wait, you

confused me. What's that drive?

THE WITNESS: Well, between 61st Street and West  
Hester Park Drive. It follows the centerline going east.  
It's essentially a farm field and about to be developed.

COMMISSIONER SCHOENFELDER: Okay. What about up  
around Strawberry Avenue? Looks like there's lots there.  
There are undeveloped lots that bump up against Marion  
Square. It looks like it's over in the northeast side of  
that area.

THE WITNESS: Commissioner, I'm not certain what's  
going on is what I'm saying.

COMMISSIONER SCHOENFELDER: But does NSP have any  
educational services out there?

THE WITNESS: We serve north of 61st Street and  
have facilities, or preparing to bring facilities in to  
serve those.

COMMISSIONER SCHOENFELDER: You're preparing to be  
or you actually have facilities there now?

THE WITNESS: I don't know the answer to that  
question, Commissioner.

COMMISSIONER SCHOENFELDER: Thank you.

MR. WIEBT: So you don't know if those are houses

THE WITNESS: I do not.

MR. WIEST: Thank you. Any other questions?

COMMISSIONER SCHOENFELDER: I want -- does the witness know whether there are houses there along Baneberry?

MR. BERKLAND: In that area through the apartment

MR. WIEST: Start all over again.

MR. BERKLAND: So in the area in through here there's an apartment complex that's going up.

COMMISSIONER SCHOENFELDER: In there where? Be more specific.

THE WITNESS: It would be north of 61st Street and south of 57th Street and you know --

COMMISSIONER SCHOENFELDER: Between Marion Road?

THE WITNESS: We're not doing it ourselves, but I know as I drive by there you can see there's apartments going up.

COMMISSIONER SCHOENFELDER: Along Baneberry Avenue when you go down and over towards Marion Road, are those developed lots or just platted lots?

THE WITNESS: I would assume they're platted.

COMMISSIONER SCHOENFELDER: That's what I need to know. Thank you.

1 MS. WIEST: Any other witnesses, Mr. Gerdes?

2 MR. GERDES: No. NSP rests.

3 Just a minute, I withdraw that rest. Your Honor,  
4 we had had a conference yesterday and you indicated that  
5 you felt that NSP had the burden of proof, and so we've  
6 participated in this hearing with that assumption.

7 Now having heard Southeastern's position in this  
8 matter, I would, for the record, suggest that according to  
9 49-34A-61, the burden of proof is on any person asking for  
10 a modification or a vacation of a Commission order.

11 We would submit that if, in fact, Southeastern is  
12 contending, as they apparently are in this case, that the  
13 Commission's official map is incorrect, then it should be  
14 their burden to prove that it is incorrect.

15 And I just I want that on the record, and I'd like  
16 the Commission to rule on that as to who has the burden of  
17 proof on that issue.

18 MS. WIEST: Do you have any response, Mr.  
19 Christenson?

20 MR. CHRISTENSON: Yes. First of all, it's our  
21 position that there's no conflict with the description.  
22 We don't need to go to the map. Secondly, we're not  
23 asking that anything be modified; an order be modified.  
24 Xcel filed a petition and here we are simply here  
25 responding to it. I think it's quite unusual in a case

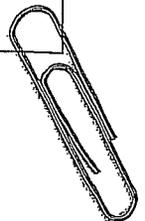
# CONTINUATION

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1 like this that there would be any burden on us to go  
2 forward and prove Xcel's case.

3 We're not asking that, and the pleadings clearly  
4 show that. We're not asking for a modification of  
5 anything. We're simply here responding to a conflict that  
6 apparently Xcel has foreseen. So I think that the proper  
7 way is for Xcel to go forward. They've done that, and now  
8 I think it's our turn.

9 MS. WIEST: At this point I would say since NSP  
10 did file this, generally the burden of proof is on the  
11 filing party. And until such time as I hear the witnesses  
12 from Southeastern, it may be possible that I could change  
13 that ruling depending on their position, but at this time  
14 I would say the burden is still on NSP.

15 MR. GERDES: Then one other item, Your Honor, and  
16 that is simply earlier I had made a request that the  
17 Commission take judicial notice of the Commission's  
18 records as it relates to the approval of the service  
19 territory agreement, Exhibit 2, and of the official map,  
20 Exhibit 1, and we would renew that request that the  
21 Commission take judicial notice of those maps.

22 MS. WIEST: Would that be something beyond the  
23 Commission order approving it?

24 MR. GERDES: Yes, because I think we were talking  
25 about the records too.

1 MS. WIEST: That would include any possible  
2 transcripts; is that correct?

3 MR. GERDES: Yes.

4 MS. WIEST: Is there any objection to that, Mr.  
5 Christenson?

6 MR. CHRISTENSON: I think the body here can take  
7 judicial notice of documents that are on file in a public  
8 place that are common knowledge, easily accessible to the  
9 public. So in that sense, yes, I would concur with the  
10 map, the order. I object to taking judicial notice of any  
11 testimony that isn't filed that we haven't seen first.

12 MS. WIEST: Yeah, I would, I guess until such time  
13 as -- I don't know even know if there is any transcript  
14 testimony on this particular area. If one of the parties,  
15 you know, finds the transcript or asks the Commission to  
16 do that, then I think they could perhaps submit that and  
17 try to get that in, but only after the other party has a  
18 chance to look at it. Anything further?

19 MR. GERDES: No. Xcel rests.

20 MS. WIEST: Mr. Christenson, you may call your  
21 first witness.

22 MR. CHRISTENSON: If we could perhaps have just  
23 five minutes to set up, we're going to use the overhead  
24 and view some exhibits. It may take a little while.

25 (AT THIS TIME A NOON RECESS WAS TAKEN.)

(EXHIBITS NO. 15 AND 16 WERE MARKED FOR IDENTIFICATION.)

VICE-CHAIRMAN NELSON: Then we can start?

MR. WIEST: You may call your first witness.

MR. CHRISTENSON: Thank you. To begin, I would like to offer into the record Exhibits 6 through 14. Mr. Gerdes and I have previously stipulated to these exhibits.

MR. GERDES: I have no objection as to foundation as to Exhibits 6 through 14.

MS. WIEST: Ms. Cremer?

MS. CREMER: I have no objection.

MS. WIEST: Exhibits 6 through 14 have been offered and received.

MR. CHRISTENSON: I also would like to propose Exhibit 16, which is a partial, a portion of Exhibit B, which is referred to in the contract which is Exhibit 2. This is just -- it isn't the entire Exhibit B, but it is a portion of it which we would like to use.

MS. WIEST: Any objection?

MR. GERDES: I have no objection as to foundation as to Exhibit 16 as being a portion of the Exhibit B stipulated to Exhibit 2.

MS. WIEST: Ms. Cremer?

MS. CREMER: I have no objection.

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.

Q. What does your apprenticeship entail?

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

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

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

Q. And where was most of this work done?

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

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

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

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

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

11

A. We use the maps all the time.

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

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

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

A. Yes, it does.

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

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

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

A. Yes.

Q. And what is that?

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

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

west boundaries of the section?

A. Yes.

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

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

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

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

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

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

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

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

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

A. Yes.

Q. How does this exhibit in the lower right-hand 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 these 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  
9 640 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 ~~Delaware~~ 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.

Q. And then what did you do next?

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

Q. And then what did you do?

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

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

A. Yes.

Q. And what was that significance?

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

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

A. No.

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

A. No.

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

1 A. That is the original government survey that was  
2 come 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.

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

A. In the 1850's.

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

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

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

A. Yes.

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

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

So it says beginning at the west center section, west center of the section, so west center of the section would be right there. Then it says go east to the center 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 how 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 Exhibits No.  
 17 2, the contract and legal descriptions. Has there 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?

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. In 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

WARREN FISK,

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

DIRECT EXAMINATION

BY MR. CHRISTENSON:

Q. Would you please state your name?

A. Warren Fisk.

Q. And where do you live?

A. In Rapid City, South Dakota.

Q. And what's your line of work?

A. I am a professional engineer and registered land  
surveyor.

Q. And how long have you been a registered land  
surveyor?

A. Been registered since 1971.

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

A. Okay. I grew up in a survey family, began  
surveying land in 1955, went to the School of Mines in  
1961, got my engineering degree. In 1974 I worked for  
other consultants until 1974 and have had my own company  
since then, Fisk Engineering.

Q. Do you serve on any licensure agencies or any  
boards or anything like that?

A. Yeah, I'm one of the two land surveyor members of

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

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

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

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

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

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

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

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

22 A. Okay.

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

1 A. Okay.

2 Q. And then let's assume that Southeastern's lines  
3 were on 69th Street, okay?

4 A. Yeah, I'm with you.

5 Q. Where would the equidistant point be?

6 A. Halfway between those two.

7 Q. Right here; right?

8 A. That would appear to be so.

9 Q. Thank you.

10 MR. GERDES: No further questions.

11 MS. WIEST: Ms. Cremer?

12 CROSS-EXAMINATION

13 BY MS. CREMER:

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

16 A. 66 feet.

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

19 A. Yes.

20 Q. Okay. And then I think it's about the third page,  
21 but I'm looking at -- look at number -- okay. And then if  
22 you would start on 102 right there, and then using Exhibit  
23 1, could you walk us through starting at 102 and walk us  
24 through how you would plot that?

25 A. Okay. First I have to find the township end

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

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

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

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

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

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

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

16 MR. BETTMANN: 49 is lops over here.

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

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

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

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

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

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

3 MS. WIEST: Is there a question?

4 MS. CREMER: It's withdrawn.

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

7 COMMISSIONER NELSON: Not me.

8 COMMISSIONER SCHOENFELDER: Not me.

9 MS. WIEST: I just had a couple questions.

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

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

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

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

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

9 MS. WIEST: But then specifically for this Section  
10 7, when you did scale that out, was in fact that line  
11 equidistant?

12 THE WITNESS: I found it slightly to the north of  
13 center.

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

15 THE WITNESS: Yes.

16 MS. WIEST: Okay. Thank you. Any other  
17 questions? Any redirect?

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

20 REDIRECT EXAMINATION

21 BY MR. CHRISTENSON:

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

25 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 MS. WIEST: Thank you, Mr. Fisk. Any other  
11 witnesses?

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.

1 Mr. Gerdes.

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

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

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

20 The Commission also adopted a map which  
21 establishes the official boundaries statutorily. Again,  
22 it's clear that what was intended to be depicted was a  
23 midpoint between the north and south boundaries. Exhibit  
24 5 shows where that midpoint lies, and we believe that that  
25 shows where the boundaries of the two utilities lie.

1 Thank you.

2 MS. WIEST: Mr. Christenson.

3 MR. CHRISTENSON: Thank you.

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

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

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

22 Mr. Fisk testified that the Bible on surveying  
23 states that the line is 61st Street. So we have  
24 Mr. Bettmann going there, we have Mr. Brinkman (sic) going  
25 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.

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

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

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

11 MS. CREMER: 14 and 15 are --

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

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

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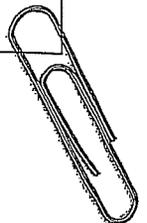
Continuation

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# of pages



1 STATE OF SOUTH DAKOTA ) IN CIRCUIT COURT  
 2 ) :SS  
 3 COUNTY OF STANLEY ) SIXTH JUDICIAL CIRCUIT

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

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

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

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

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

22   
 23 \_\_\_\_\_  
 24 Lori J. Grode, RMR/RPR  
 25 Notary Public

**RECEIVED**

OCT 16 2000

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

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

---

IN THE MATTER OF THE REQUEST BY XCEL \*  
ENERGY FOR A DETERMINATION OF ITS \* **CERTIFICATE OF SERVICE**  
TERRITORY BOUNDARIES \* **EL00-026**

---

Robert A. Christenson, Attorney for Southeastern Electric Cooperative, Inc., hereby certifies that on October 12, 2000, the original and seven true and correct copies of the Brief of Southeastern Electric Cooperative, Inc. were served by U.S. Mail, postage prepaid to:

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

A true and correct copy of the Brief of Southeastern Electric Cooperative, Inc. was served by U.S. Mail, postage prepaid to:

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

Dated at Sioux Falls, South Dakota, this 12<sup>th</sup> day of October, 2000.

CHRISTENSON LAW OFFICE, P.C.

By: 

Robert A. Christenson  
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October 20, 2000

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**OCT 20 2000**

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

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

RE: **XCEL ENERGY; SOUTHEASTERN ELECTRIC COOPERATIVE  
TERRITORIAL DISPUTE**  
Docket EL00-026  
Our file: 0185

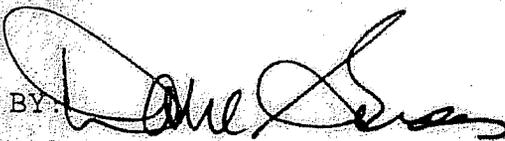
Dear Bill:

Enclosed are original and ten copies of Xcel's reply brief in this docket. Please file the enclosures.

With a copy of this letter, I am sending a copy of this brief to opposing counsel. Thank you very much.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

DAG:mw

Enclosures

cc/enc: Robert Christenson  
Karen Cremer  
Jim Daniels  
Jim Wilcox  
Mike Swenson

560

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October 20, 2000

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OCT 20 2000

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UTILITIES COMMISSION

HAND DELIVERED

Mr. William Bullard, Jr.  
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State Capitol  
500 East Capitol Avenue  
Pierre, South Dakota 57501-5070

RE: XCEL ENERGY; SOUTHEASTERN ELECTRIC COOPERATIVE  
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Dear Bill:

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With a copy of this letter, I am sending a copy of this brief to opposing counsel. Thank you very much.

Yours truly,

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BY: 

DAG:mw

Enclosures

cc/enc: Robert Christenson  
Karen Cremer  
Jim Daniels  
Jim Wilcox  
Mike Swenson

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

## BEFORE THE PUBLIC UTILITIES COMMISSION

## OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE REQUEST BY	)	EL00-026
XCEL ENERGY FOR A DETERMINATION	)	
OF ITS TERRITORY BOUNDARIES	)	<b>XCEL'S REPLY BRIEF</b>

Pursuant to the briefing schedule established by the Commission at the conclusion of the hearing in this matter held on October 5, 2000, Xcel Energy, Inc. ("Xcel") provides this reply brief to the brief of Southeastern Electric Cooperative, Inc., ("Southeastern").

## SUMMARY OF ARGUMENT

The Commission's July 1, 1976, decision and order, the assigned service area agreement between Xcel and Lincoln-Union and, most importantly, the relevant statute, recognize the official map as establishing the service area boundary between the two electric utilities. Southeastern has introduced an argument which withstands neither logical nor historical scrutiny to assert that the map, the written legal description and surveying convention all point to the half section line, rather than the midpoint of the section, as constituting the correct service territory boundary. As the evidence clearly shows, the midpoint of this "short" section

was intended by both the parties and the law to establish the area boundary.

### ARGUMENT AND AUTHORITIES

Southeastern contends at page 2 of its brief that there is a conflict between the map attached to the assigned section and the agreement between the parties (Exhibit C) and the legal descriptions attached to the contract, and it goes on to contend that through surveying convention they actually intended the line to be measured from the southern boundary of the section. It contends, since the maps are for all practical purposes identical, Southeastern then contends that the other map (Exhibit B) likewise indicates a boundary on the west corner of the section. This argument has no support in the law, the record or logic. While it is true that the half section line with respect to the boundary of the Street as contended by Southeastern, Southeastern's faulty logic supports the Commission's decision under the statute, not the Commission's decision in this case, nor the maps and not the written legal descriptions.

Southeastern argues that at the time the maps were prepared, it was indicated that the assigned section was to be surveyed by the utility companies were used to prepare the maps, and that it was stated in the record that these assignments were made by the Commission.

between the maps and the written agreements. This of course directly contradicts the language in the agreement between NSP and Lincoln-Union Electric, which was an exhibit in that proceeding, and is Exhibit 2 in this proceeding. However, nothing in the 1976 record changes the language in Exhibit 2. And in any event, that argument is effectively dealt with by the clear language of the Commission's 1976 decision. The Decision and Order provided that it was

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. (Emphasis supplied)

Clearly, by Commission order, the maps, including Exhibit 1 in this proceeding, not the assigned service area agreements, were declared to be the legal evidence of the territorial boundaries. This of course is precisely what is provided by SDCL § 49-34A-44. In that statute, the Commission was directed to prepare ". . . maps to accurately and clearly show the boundaries of the assigned service area of each electric utility."

Southeastern in this proceeding cannot now go behind the Commission's 1976 decision in Docket F-3106, quoted above. If Southeastern (Lincoln-Union Electric at the time) disputed the Commission's decision in that docket, its remedy was to appeal the decision. The time for appeal has long since passed, and the

Commission's determination is conclusive. It might also be added that the Commission's determination is consistent with its statutory responsibility. SDCL § 49-34A-44.

The written legal description is at best ambiguous. This is a point agreed upon by all three engineers, who each testified they would need to rely on some reference outside the contract to determine the precise area described. (Doug Berkland, TR 40-43; Martin Bettman, TR 60-62; Warren Fisk, TR 108-111). However, the description is consistent with an effort by a lay person to create a description from an existing map. (Fisk, TR 109, 110). It is also consistent with a methodology whereby the parties choose a point equidistant between existing service areas. (Bettman, TR 61-62; Fisk, TR 113, 114). This of course is the methodology contemplated by SDCL § 49-34A-43.

We are then left with the maps. Exhibits 3 and 4 show that the map attached to Exhibit 2 and the PUC's official map are, for all practical purposes, alike. These exhibits are enlargements of the original maps, Exhibit 3 being an enlargement of the assigned service area agreement map and Exhibit 4 being an enlargement of the Commission's official map. The discrepancy between the upper half section line and the lower center line clearly indicates that the difference cannot be explained by a draftsman's error or the

width of a pen or pencil. The maps clearly depict a north-south division predicated upon the center of a "short" section.

Southeastern has constructed an argument based upon surveying convention which is irrelevant to the facts and law at hand. Both the statute and the Commission's 1976 order adopt the map, not the description. The map is clear. It depicts a southern boundary of Xcel's service area equidistant between the northern and southern boundaries of the section. The written description attached to the contract between the parties may be helpful in understanding what was to be described, but the contents of the contract (including the description) were incorporated into the Commission's 1976 final decision and order. Even if there was a way to incorporate the real estate description attached to the contract, it clearly supports a southern boundary of Xcel's service territory midway between the northern and southern boundaries of the section. The clear grammatical meaning of "center point" describes a boundary at the midpoint. Given the state of the maps, the boundary can be determined in no other fashion. Surveying convention makes an interesting argument, but it has no relevance to a situation where the parties clearly intended the center point of the section on a east-west line to be the boundary and where the Commission's order and official map adopted this boundary.

CONCLUSION

Both the law and the evidence are clear. The correct southern boundary of Xcel's service area in the disputed area is the center line between 57<sup>th</sup> Street and 69<sup>th</sup> Street, which are the northern and southern boundaries of Section 7. Xcel respectfully requests that the Commission so order.

Respectfully submitted this 20<sup>th</sup> day of October, 2000.

MAY, ADAM, GERDES & THOMPSON LLP

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

CERTIFICATE OF SERVICE

David A. Gerdes of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 20<sup>th</sup> day of October, 2000, he mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the foregoing in the above-captioned action to the following at their last known addresses, to-wit:

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

Jim Daniels  
Daniels Construction  
27160 470<sup>th</sup> Avenue  
Tea, SD 57064

Robert A. Christenson  
Christenson Law Office  
P.O. Box 904  
Sioux Falls, SD 57101



David A. Gerdes

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

**IN THE MATTER OF THE REQUEST BY XCEL  
ENERGY FOR A DETERMINATION OF ITS  
TERRITORY BOUNDARIES**

) **FINDINGS OF FACT AND**  
) **CONCLUSIONS OF LAW;**  
) **NOTICE OF ENTRY OF**  
) **ORDER**  
) **EL00-026**

On September 15, 2000, the Public Utilities Commission (Commission) received a request from Xcel Energy (Xcel) to determine a territorial boundary dispute. Xcel stated that Xcel and Southeastern Electric Cooperative, Inc. (Southeastern) do not agree on a service territory boundary located in southwest Sioux Falls. Xcel stated the following:

The area in question is known as the "Sunset Ridge Addition." It lies in northern Lincoln County just west of Interstate 29, in Section 7 of Township 100 North, Range 50 West. I am under the understanding that Southeast Coop believes the territorial boundary should be drawn at what is known as 61st Street. Xcel believes that the territorial boundary should be drawn somewhat south of 61st Street at what will be known as Bakker Park Drive.

The hearing was held as scheduled on October 5, 2000, beginning at 10:00 a.m. in Room 412 of the State Capitol Building, 500 E. Capitol, Pierre, South Dakota. The issue at the hearing was to determine the electric service boundary between Xcel and Southeastern in Section 7, Township 100 North, Range 50 West, in Lincoln County. Briefs were filed following the hearing.

At its November 2, 2000, meeting, the Commission considered this matter. The Commission allowed the admission, as an exhibit, of the transcript of the original proceeding that established the territorial boundaries. With respect to the merits of the case, the Commission found that the territorial map of the Commission establishes that the southern boundary of Xcel's service area is the line equidistant between the northern and southern boundaries of Section 7, Township 100 North, Range 50 West, in Lincoln County.

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

**FINDINGS OF FACT**

1. On September 15, 2000, the Commission received a request from Xcel to determine a territorial boundary dispute. Xcel stated that Xcel and Southeastern do not agree on a service territory boundary located in southwest Sioux Falls. The boundary line at issue is located in Section 7, Township 100 North, Range 50 West, in Lincoln County (hereafter referred to as Section 7). Exhibits 1-4.
2. Xcel maintained that its southern boundary is a line equidistant between the south section line and the north section line of Section 7. Tr. at 16-17.

3. Southeastern contended that the boundary line was not equidistant between the south section line and the north section line of section 7, but was located further north, which would place the boundary line near 61st Street. Tr. at 79-81. Southeastern contended that the written description of the location of the territorial boundary placed the line near 61st Street and that the map was consistent with the written description. *Id.*

4. In 1976, Southeastern and Excel (formerly Northern States Power Company) entered into a contract in which they came to an agreement as to the location of their territorial boundaries. Exhibit 2. Attached to the contract was a map showing the boundaries and written descriptions of each utility's service area. *Id.* The written description describes the disputed section as follows:

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.

5. Section 7 is a fractional section and it is not a full mile from south to north. Tr. at 20-21, 30. When dealing with a fractional section, the term "half mile line" is a surveyor's term that generally requires a surveyor to start at the southeast quarter and go a half mile to the north to find the "half mile line." Tr. at 30. This would put Xcel's southern boundary near 61st Street. Tr. at 31. However, the written description also contains some terms that are not commonly used surveying terms and can be interpreted in different ways. Tr. at 22-23, 39-41, 60-61, 63, 76, 108-110. A Southeastern witness agreed that the written description was quite possibly written by a lay person trying to describe a map that was already drawn. Tr. at 109-110. The Commission finds that the written description of the disputed area as attached to the contract is ambiguous.

6. The contract provided that if there was any conflict between the map and the written description, "the map shall in all respects be conclusive proof of the assigned service area of each utility." *Id.* at 3. The map attached to the contract shows that the disputed boundary line is located equidistant between the north and south section lines. Tr. at 10-11; Exhibits 2, 3.

7. On July 1, 1976, the Commission approved the official electrical territorial maps for all territorial boundaries in the Sioux Falls area. Exhibit 15. The Commission's order stated 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." *Id.* at 1 (finding of fact IV). The Commission then ordered that the Official Electrical Territorial Maps establish the assigned service areas of the electric utilities. *Id.* at 2 (ordering clause).

8. Exhibit 1 is a copy of the official territorial map on file with the Commission. Tr. at 53-54. Exhibit 4 is an enlarged Exhibit 1. Tr. at 13. The official territorial map as filed with the Commission shows that the boundary line in Section 7, that depicts the southern boundary of Xcel's territory and the northern boundary of Southeastern's territory, is a line

equidistant between the south section line and the north section line of Section 7. Tr. at 16-17, 42, 61-62, 89.

**CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over this matter pursuant to SDCL 49-34A-42 through 49-34A-44, inclusive.
2. The Commission finds that the official territorial map as approved by the Commission shows that the boundary line in Section 7, that depicts the southern boundary of Xcel's territory and the northern boundary of Southeastern's territory, is a line equidistant between the south section line and the north section line of Section 7. Tr. at 16-17, 42, 61-62.
3. The Commission further finds that the written description of the disputed area as attached to the contract is ambiguous. Exhibit 2. The Commission finds that the map attached to the contract also shows that the disputed boundary line was located equidistant between the north and south section lines. Tr. at 10-11; Exhibits 2, 3.

It is therefore

ORDERED, that the southern boundary of Xcel's territory and the northern boundary of Southeastern's territory is a line equidistant between the south section line and the north section line of Section 7.

**NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that this Order was duly entered on the 9th day of November, 2000. Pursuant to SDCL 1-26-32, this Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 9th day of November, 2000.

CERTIFICATE OF SERVICE	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By: <u>Allevia Kalbo</u>	
Date: <u>11/9/00</u>	
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSIONER:

Pam Nelson  
PAM NELSON, Commissioner

Laska Schoenfelder  
LASKA SCHOENFELDER, Commissioner

**CHRISTENSON LAW OFFICE, P.C.**

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Robin M. Eich  
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David M. Buechler (1952-2000)

December 7, 2000

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

**RECEIVED**

DEC 8 2000

Re: Xcel/Southeastern Territorial Dispute

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

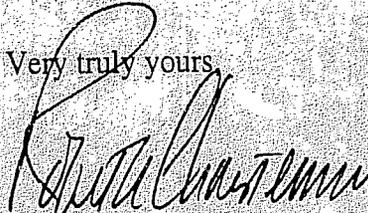
Dear Mr. Bullard:

Enclosed are the original and ten copies of the Petition to Reconsider or in the Alternative, Petition to Review of Southeastern Electric Cooperative, Inc. and Affidavit of Robin M. Eich.

If you have any questions, please contact me.

Best personal regards.

Very truly yours,



Robert A. Christenson

RAC/re  
Enclosures

cc: Mr. David A. Gerdes  
Mr. Brad Shardin

572

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

DEC 08 2000

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

IN THE MATTER OF THE REQUEST BY XCEL	*	
	*	PETITION TO RECONSIDER
ENERGY FOR A DETERMINATION OF ITS	*	OR IN THE ALTERNATIVE
	*	PETITION TO REVIEW
TERRITORY BOUNDARIES	*	EL00-026
	*	

COMES NOW, Southeastern Electric Cooperative, Inc., (Southeastern), by and through its attorney, Robert A. Christenson, and petitions the Public Utilities Commission of the State of South Dakota (PUC), pursuant to Administrative Rules of South Dakota 20:10:01:30.01, for reconsideration of In the Matter of the Request by Xcel Energy for a Determination of its Territory Boundaries (ELOO-026), based on the following:

1. That Southeastern is a party to this proceeding as defined by SDCL § 1-26-1(6).
2. That on November 9, 2000, the PUC entered Findings of Fact and Conclusions of Law and an Order on proceeding EL00-026, hereinafter referred to as the PUC Order.
3. That under Findings of Fact, section 5, the PUC found as a fact that "A Southeastern witness agreed that the written description was quite possibly written by a lay person trying to describe a map that was already drawn." This finding of fact by the PUC is inconsistent with the record in that Mr. Larry Gunderson, an engineer for the PUC, was involved in the preparation of maps concerning territories for the electric utilities, relying on the agreements that were sent by the separate utility companies. The written agreements preceded the maps. (Transcript of June 7, 1976 PUC hearing, pp. 8-9). At said hearing, Mr. Mark Meierhenry, legal counsel for the PUC, stated, "Mr. Gunderson has had to prepare maps for the entire

state.” (Transcript of June 7, 1976 PUC hearing, p. 36). Mr. Gunderson himself testified, specifically referring to a Minnehaha County map, saying, “The intent of the map was to draw the maps in accordance with the agreements.” (Transcript of June 7, 1976 PUC hearing, p. 43). It is clear from the record that the written description was not written by a lay person trying to describe a map. The maps were drawn by PUC engineer Mr. Gunderson only after reviewing the written agreements, which included legal descriptions.

4. The three (3) boundary areas Southeastern is asking the PUC to compare in this petition are attached as Exhibit 1 and outlined in red as (A), (B) and (C). The legal descriptions associated with the boundary in Exhibit 1 (A), (B) and (C) appear in Exhibit B of the Contract in the Matter of the Establishment of an Assigned Service Area on file with the PUC and as a part of the record. Specifically, the boundaries between Southeastern and Xcel addressed in Exhibit 1(A), (B) and (C) are as follows:

**EXHIBIT 1(A)**

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 I-29 in section 7, R50W, T100N. (Emphasis added).

**EXHIBIT 1(B)**

102. Then north along the section line to the south quarter mile line of section 12, R50W, T100N.
103. Then east along the south quarter mile line to the **half mile line** to section 12, R50W, T100N.
104. Then north one quarter mile to the center point of section 12, R50W, T100N.
105. Then east along the **half mile** to the center point of section 7, R49W, T100N.
106. Then north along **half mile line** to the north quarter mile line of section 7, R49W, T100N.

107. Then east along the north quarter mile line to the west quarter mile line of section 8, R49W, T100N.

108. Then north along the west quarter mile line to the county line of section 8, R49W, T100N.

### EXHIBIT 1(C)

1. Beginning at the north **half mile line** on county line of section 9, R49W, T100N.
  4. Then south one half mile to the center point of section 9, R49W, T100N.
  5. Then east along the **half mile line** to the center point of section 10, R49W, T100N.
  6. Then north along the **half mile line** to the county line of section 10, R49W, T100N.
5. That the area marked in green in Exhibit 1(C) represents three parcels according to the Lincoln County Assessor's Office. The parcel legally described as SE 1/4 9-100-49 is 160 acres. It follows that the northern edge of the green area is the "half mile line." It also follows that the southern edge of Xcel's boundary is the "half mile line." This factual conclusion is consistent with the testimony of Warren Fisk, expert witness for Southeastern and is consistent with the PUC Order. (PUC Order, page 2, section 5, "When dealing with a fractional section, the term "half mile line" is a surveyor's term that generally requires a surveyor to start at the southeast quarter and go a half mile to the north to find the "half mile line.") (See also, Affidavit of Robin M. Eich).
6. That the area marked in green in Exhibit 1(B), particularly the southeast quarter (SE 1/4) of Section 12 contains two (2) parcels, one consisting of 80 acres and one consisting of 76.9 acres. The reason this quarter is not a full quarter is because of the railroad right of way according to the Lincoln County Assessor's Office. It follows that the northern edge of the

southeast quarter of the green area is the "half mile line." It also follows that the southern edge of Xcel's boundary is the "half mile line." That this factual conclusion is consistent with the testimony of Warren Fisk, expert witness for Southeastern and is consistent with the PUC Order. (PUC Order, page 2, section 5, "When dealing with a fractional section, the term "half mile line" is a surveyor's term that generally requires a surveyor to start at the southeast quarter and go a half mile to the north to find the "half mile line.") (See also, Affidavit of Robin M. Eich).

7. That all three (3) legal descriptions establishing the boundaries between Southeastern and Xcel referred to in Exhibit 1 as (A)(B) and (C), are consistent in that each legal description utilizes the surveyor's term "half mile line."
8. That when a straight line is drawn (see red dotted line on Exhibit 1) along the southern (Xcel) and northern (Southeastern) boundary in Exhibit 1 (B) and (C), it becomes clear that the map is consistent in relying on the half mile line to draw the boundary on each of the these examples. The half mile line boundary also extends over to Exhibit 1 (A) clearly placing the northern boundary of Southeastern and the southern boundary of Xcel at the half mile line.
9. That had Mr. Gunderson intended to stray from using the half mile line in establishing the boundaries in Exhibit (1)(A), then the map as drawn would have placed the boundary considerably lower on the map – which he clearly did not do.
10. That the PUC concluded factually and legally that the "Official territorial map as filed with the Commission shows that the boundary line in Section 7, that depicts the southern boundary of Xcel's territory and the northern boundary of Southeastern's territory, is a line equal distance between the south section line and the north section line of Section 7," (PUC Order, pp. 2-3, sec. 6 and Sec. 2). Petitioner respectfully submits this conclusion of fact and law is inconsistent with the legal descriptions outlining the boundaries addressed in Exhibit 1 (B) and (C) and said conclusion is inconsistent with the clear intention of the map maker. The northern boundary of Southeastern's service area in Exhibit 1 (A) should be the half mile

line as testified to by Mr. Warren Fisk. Again, this position is consistent with the position of the PUC that the territorial maps are accurate and are legally significant. This position is also consistent with the boundaries established in Exhibit 1(B) and (C).

11. That the salient aspects of the factual claims in this petition were not available to either party at the time of the hearing and therefore, Southeastern is requesting the PUC to reconsider or rehear this matter taking into consideration the facts and circumstances set forth in the petition.

WHEREFORE, Southeastern asks the PUC to reconsider its legal determination that the southern boundary of Xcel's territory and the northern boundary of Southeastern's territory is a one equidistant between the south section line and the north section line of Section 7.

Respectfully submitted this 7<sup>th</sup> day of December, 2000.

CHRISTENSON LAW OFFICE, P.C.

By: 

Robert A. Christenson  
Attorney for Southeastern Electric Cooperative, Inc.  
412 West 9th Street  
Sioux Falls, SD 57104  
(605) 332-1200



STATE OF SOUTH DAKOTA)  
:SS  
COUNTY OF MINNEHAHA )

Subscribed and sworn to before me this 7<sup>th</sup> day of December, 2000.

*Karen Hunter*

Notary Public - South Dakota

My commission expires: 1-21-05

STATE OF SOUTH DAKOTA)  
:SS  
COUNTY OF MINNEHAHA )

Subscribed and sworn to before me this 7<sup>th</sup> day of December, 2000.

*Karen Hunter*

Notary Public - South Dakota

My commission expires: 1-21-05

**NEXT**

**DOCUMENT (S)**

**BEST IMAGE**

**POSSIBLE**

UNITED STATES OF AMERICA  
COUNTY OF LINCOLN

EXHIBIT A and duly recorded with Book # 11 of Sub. on page 20  
WARRANTY DEED REGISTERED IN BOOK # 11 of Sub. on page 20  
By *Sarah Larson*

WITNESSES: *Sarah Larson*

SIDNEY EPSTEIN and JUDEE K. EPSTEIN, husband and wife, Grantors, of Sioux Falls, South Dakota, for and in consideration of One Dollar and other good and valuable consideration, GRANT AND CONVEY TO JUDEE K. EPSTEIN and SIDNEY EPSTEIN, Trustees of the Judee K. Epstein Living Trust, of 109 East 34th Street, Sioux Falls, South Dakota 57105, the following described real estate in the County of Lincoln, State of South Dakota:

The North Half of the Southwest Quarter of the Southwest Quarter (N1/2SW1/4); and the Southeast Quarter of the Southwest Quarter (SE1/4SW1/4) lying West of the West right-of-way line of the Chicago, St. Paul and Pacific Railroad; all in Section Twelve (12), Township One Hundred (100) North, Range Fifty (50) West of the 5th Principal Meridian, Lincoln County, South Dakota.

Transfer Fee: Exempt SDCL 43-4-22(18)

Dated this 17 day of May, 1993.

*Sidney Epstein*  
SIDNEY EPSTEIN

*Judee K. Epstein*  
JUDEE K. EPSTEIN

STATE OF SOUTH DAKOTA )  
  ) SS  
COUNTY OF MINNEHAHA )

On this, the 17 day of May, 1993, before me, the undersigned officer, personally appeared SIDNEY EPSTEIN and JUDEE K. EPSTEIN, known to me or satisfactorily proven to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

*Sarah Larson*

Notary Public, South Dakota  
My Commission Expires: 10/3/96



EXHIBIT-B

JUDITH HUTCHESON SIMON, A MARRIED PERSON

County of Cleveland

State of OKLAHOMA for and in consideration of

TEN DOLLAR AND OTHER GOOD AND VALUABLE CONSIDERATION

DEED & CONVEYANCE AND WARRANTS TO

GRANTED BY CHRISTENSEN AND LINDA L. CHRISTENSEN, husband and wife,

to and to the use of the said JUDITH HUTCHESON SIMON

of MINOR FALLS, ND 57105 P. O. the following described real estate in the County

Lincoln in the State of South Dakota:

The South half of the Southwest quarter of the Southwest quarter  
(or SW 1/4 SW 1/4), except the North two hundred forty-one feet  
(241') thereof, in Section twelve (12), Township one hundred  
(100) North, Range fifty (50), West of the 5th P.M.,  
Lincoln county, South Dakota, according to the government survey thereof.

TRANSFER FEE \$42.50

The greater warrants that neither she nor any member of her family has ever  
occupied the above described premises as a homestead.

TRANSFER FEE \$ 42.50

WITNESSED on the 5th day of January 1987  
Dante J. Jones Judith Hutcheson Simon  
Notary Public Judith Hutcheson Simon

RECORDS  
STATE OF SOUTH DAKOTA

County of Lincoln

Filed for record this 15th  
day of January 1987

at Lincoln in and recorded  
in Book 92 Page 26

Notary Public

Notary Public  
Lincoln County, S.D.

NOTARY PUBLIC

OKLAHOMA  
STATE OF ~~SOUTH DAKOTA~~

County of Cleveland

On this the 5th day of January 1987 before  
me, Dante J. Jones Notary Public, the undersigned  
affirm, personally appeared \_\_\_\_\_  
Judith Hutcheson Simon, a married person

known to me or satisfactorily proven to be the person whose  
name is subscribed to the within instrument and acknow-  
ledged that she executed the same for the purposes therein  
contained.

In witness whereof I hereunto set my hand and official seal.

Dante J. Jones  
Notary Public

My commission expires February 5, 1987

WARRANTY DEED

Just Tenancy  
STATE FORM

*Judith L. Jones*  
*Christensen*  
TO  
*Robert M. Jones*  
*Christensen*

STATE OF SOUTH DAKOTA  
County of *Deuel*

Filed for record this *16*  
day of *Feb*  
*6:10* o'clock *A.M.* and  
in Book *88* of  
Page *117*

*Paul Jones*  
Recorder of Deeds  
*Woods, Justice*  
*Shultz*

MICROFILM SYSTEMS

3M

*Robert M. Jones and Street Jones, his husband,*

*Deuel* County

for and to the behoof of *ONE DOLLAR AND*

*ROBERT M. CHRISTENSEN AND LYDIA L. CHRISTENSEN, husband and wife,*

the following described real estate in the County of *Deuel*  
in the State of South Dakota:

The South one hundred forty-two feet (N. 341') of the South half of the Southwest quarter of the Southwest quarter (S4 SW1/4) of Section 117, Township one hundred (100) North, Range 115 West, and the Fifth Principal Meridian, Lincoln County, South Dakota, together with the one hundred forty-two and twenty-four (142 24/100) acres of the same.

WARRANTY DEED

*Robert M. Jones*  
1982

1982, before me,  
the undersigned officer, personally appeared  
*Robert M. Jones and Street Jones,*  
known to me as satisfactorily

*Robert M. Jones*  
Notary Public, State of Oklahoma  
Date of Office

EXHIBIT D

DATE: December 6, 2000

TO: Christenson Law Office  
Robin M Rich

FAX: 605-319-1940

It appears by looking at the map you faxed to us that you are inquiring about the SE $\frac{1}{4}$  9-100-49 and the W $\frac{1}{2}$  SW $\frac{1}{4}$  of 10-100-49. The SE $\frac{1}{4}$  9-100-49 is 160 acres and is owned by Gerald Johnson. The W $\frac{1}{2}$  SW $\frac{1}{4}$  10-100-49 is 80 acres and is also owned by Gerald Johnson.

The next area you were interested in looks like it is SW $\frac{1}{4}$  12-100-50. I show 40 Acres in SE $\frac{1}{4}$  SW $\frac{1}{4}$  - Northstar Development and 10 Acres in S $\frac{1}{2}$  SW $\frac{1}{4}$  SW $\frac{1}{4}$  - Robert Christensen.

Please let us know if you have further questions.

Lincoln County Assessor's Office

DATE: December 7, 2000

TO: Christenson Law Office  
Robin M. Eich

FAX: 605-339-3940

You called asking about the SE $\frac{1}{4}$  of 12-100-49. It appears that the SE $\frac{1}{4}$  SE $\frac{1}{4}$  (Ex 3.10 Ac RY) contains 76.90 Acres and is owned by First NW Trust Co.

The NE $\frac{1}{4}$  SE $\frac{1}{4}$  12-100-49 is approximately 80 acres minus the SE ROW. Speier, Inc is the owner.

Please let us know if you have further questions.

Director of Equalization Office

584

PUBLIC  
UTILITY  
COMMISSION

OFFICIAL  
ELECTRIC  
TERRITORY

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

REA

NSP

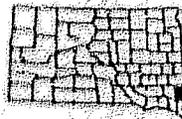
IPS

MUNI

GENERAL HIGHWAY MAP  
**LINCOLN COUNTY**  
SOUTH DAKOTA

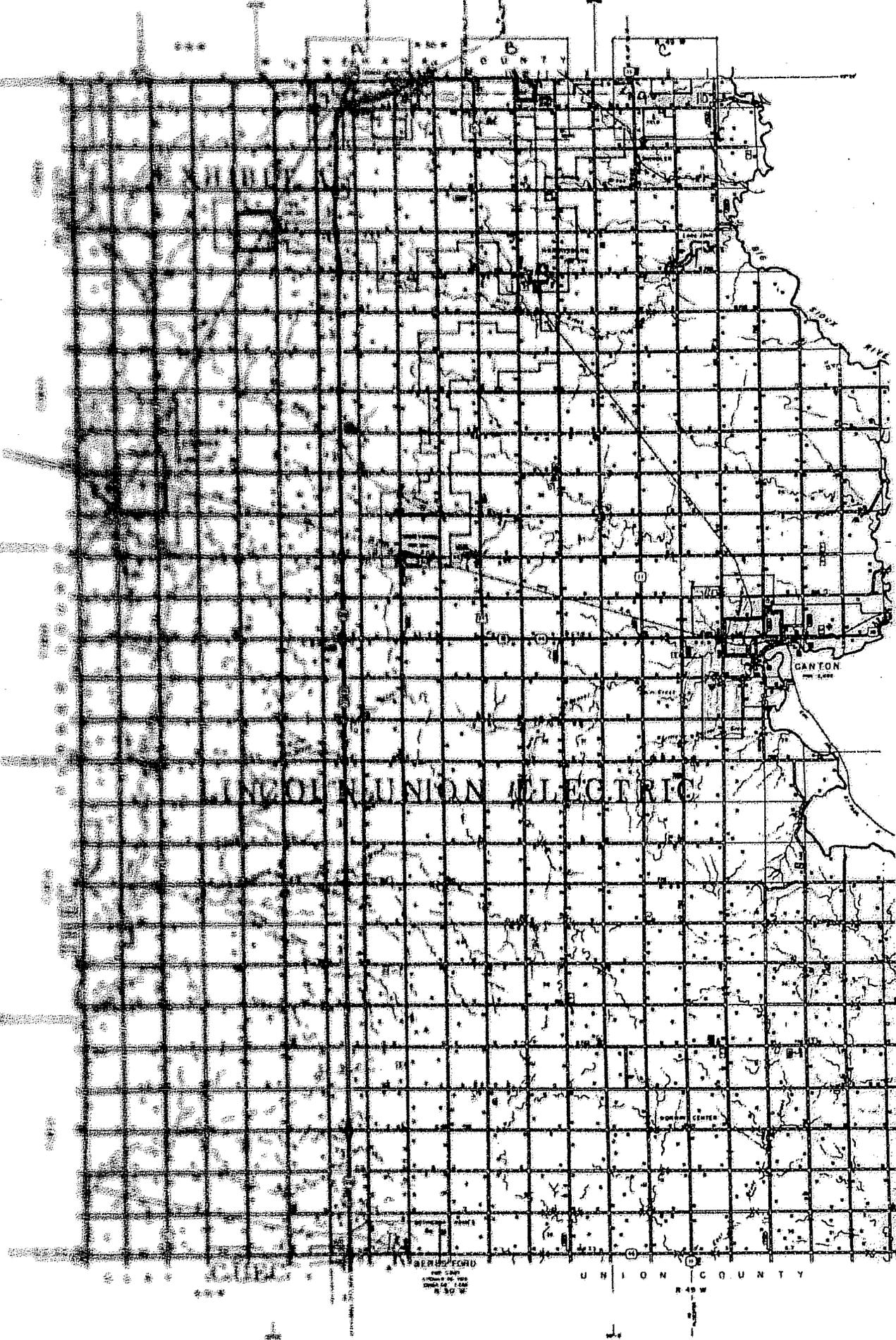
PREPARED BY THE  
SOUTH DAKOTA DEPARTMENT OF HIGHWAYS  
RESEARCH AND PLANNING DIVISION  
IN COOPERATION WITH THE  
U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION

585



LINCOLN COUNTY LEGAL PROJECTING  
U.S. AND STATE ENGINEER DEPARTMENTS AND  
THE FEDERAL AID DIVISION AND FEDERAL AID  
DISTRICT OFFICE OF S.D. 2011

Exh1



# LINCOLN UNION ELECTRIC

CANTON  
Pop. 1,000

WAGON CENTER

BENSFORD  
Pop. 200  
Elev. 600  
Dist. 1.5 mi.  
R. 30 W.

UNION COUNTY

R. 40 W.

Scale: 1" = 1/2 mile  
1" = 1/4 mile

BEFORE THE PUBLIC UTILITIES COMMISSION DEC 08 2000  
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

IN THE MATTER OF THE REQUEST BY XCEL \*  
ENERGY FOR A DETERMINATION OF ITS \* CERTIFICATE OF SERVICE  
TERRITORY BOUNDARIES \* EL00-026

Robert A. Christenson, Attorney for Southeastern Electric Cooperative, Inc., hereby certifies that on December 7, 2000, the original and ten true and correct copies of the Petition to Reconsider or in the Alternative Petition to Review of Southeastern Electric Cooperative, Inc. and Affidavit of Robin M. Eich were served by U.S. Mail, postage prepaid to:

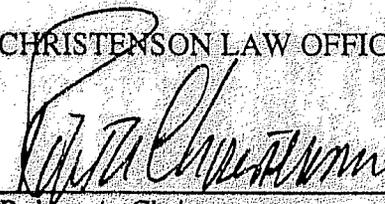
Mr. William Bullard, Jr.  
Executive Director  
South Dakota Public Utilities Commission  
State Capitol  
Pierre, SD 57501-5070

A true and correct copy of the Petition to Reconsider or in the Alternative, Petition to Review of Southeastern Electric Cooperative, Inc. and Affidavit of Robin M. Eich were served by U.S. Mail, postage prepaid to:

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

Dated at Sioux Falls, South Dakota, this 7<sup>th</sup> day of December, 2000.

CHRISTENSON LAW OFFICE, P.C.

By:   
Robert A. Christenson  
Attorney for Southeastern Electric Cooperative, Inc.  
412 West 9th Street  
Sioux Falls, SD 57104  
(605) 332-1200

MAY, ADAM, GERDES & THOMPSON LLP

503 SOUTH PIERRE STREET

P.O. BOX 160

PIERRE, SOUTH DAKOTA 57501-0160

STATE OF SOUTH DAKOTA  
PUBLIC UTILITIES COMMISSION  
ATTENTION: GENERAL COUNSEL  
WARREN W. MAY  
503 EAST CAPITOL AVENUE  
PIERRE, SOUTH DAKOTA  
57501-0001

December 20, 2000

OF COUNSEL:  
WARREN W. MAY

TELEPHONE  
605.224.8803  
TELECOPIER  
605.224.8289  
E-MAIL  
dag@magt.com

**HAND DELIVERED**

**RECEIVED**

DEC 20 2000

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

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

RE: XCEL ENERGY; SOUTHEASTERN ELECTRIC COOPERATIVE  
TERRITORIAL DISPUTE  
Docket EL00-026  
Our file: 0185

Dear Bill:

Enclosed are original and ten copies of Xcel's opposition to Southeastern's petition to reconsider the Commission's decision in this docket. Please file the enclosure.

With a copy of this letter, I am sending copies of the enclosure to counsel.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

CAG:rw

Enclosures

cc/enc: Robert A. Christenson  
Karen Cremer  
Jim Wilcox  
Mike Swenson

DEC 20 2000

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE REQUEST BY ) EL00-026  
XCEL ENERGY FOR A DETERMINATION )  
OF ITS TERRITORY BOUNDARIES ) OPPOSITION TO PETITION  
 ) TO RECONSIDER

Xcel Energy, Inc., ("Xcel") oppose the petition to reconsider the Commission's decision in this docket dated December 7, 2000, filed by Southeastern Electric Cooperative, Inc., ("Southeastern"). The certificate of service on the petition indicates that it was served upon the undersigned on December 7, 2000, but the postmark on the mailing would indicate that it was mailed on December 8, 2000.

While Southeastern seeks to cast its request in a different light, it simply is a rehash of facts and issues which were already submitted to the Commission. The Commission's July 1, 1976, decision and order, the Assigned Service Area Agreement between NSP (Xcel's predecessor) and Lincoln-Union (Southeastern's predecessor) and, most importantly, the relevant statute (SDCL § 49-34A-44) recognize the official map as establishing the service area boundary between the two electric utilities. While Southeastern contended that the map, the written legal description and surveying convention all point to the half section line, rather than the midpoint of the section, to constitute the correct service territory boundary, the evidence clearly shows that the midpoint of this "short" section was intended by both parties and the law to

depict the service area boundary. The official map clearly shows this, it was approved in 1976, and it cannot now be questioned.

Southeastern seizes upon a finding of fact, which is accurate, and tries to rehash its entire argument that what was "really meant" was that the half section line should be the boundary, rather than the midpoint of this short section. The evidence simply does not support such a position. As a collateral factual matter, Xcel cross-examined Southeastern's expert, Warren Fisk, as follows:

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

A: Yes.

Q: Does it sound more like it was written by a layperson trying to describe a map that was already drawn?

A: Quite possibly yes.

Hearing Transcript, pp. 109, 110.

Even if the description was not written by a layperson, all of the expert engineers who testified at the hearing agreed that they would need to rely on some reference outside the contract to determine the precise area described. (Doug Birkland, transcript 40-43; Martin Bettman, transcript 60-62; and Warren Fisk, transcript 108-111). In other words, the legal description does not provide the ultimate answer.

The Commission found that the official map indicates the boundary as being the midpoint of the section. This is clearly

supported by the official map, the statute and the evidence at the hearing. Whether or not the description was written by a layperson is of no consequence.

CONCLUSION

The petition to reconsider should be denied.

Dated this 20<sup>th</sup> day of December, 2000.

MAY, ADAM, GERDES & THOMPSON LLP

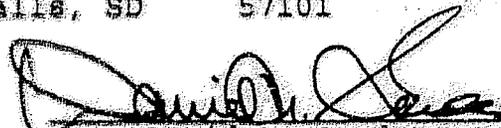
BY:   
DAVID A. GERDES  
Attorneys for Xcel Energy, Inc.  
503 South Pierre Street  
P.O. Box 160  
Pierre, South Dakota 57501-0160  
Telephone: (605)224-8803  
Telefax: (605)224-6289

CERTIFICATE OF SERVICE

David A. Gerdes of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 20<sup>th</sup> day of December, 2000, he mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the foregoing in the above-captioned action to the following at their last known addresses, to-wit:

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

Robert A. Christenson  
Christenson Law Office  
P.O. Box 904  
Sioux Falls, SD 57101

  
David A. Gerdes

# South Dakota Public Utilities Commission

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



March 20, 2001

Ms. Vivian Fossum  
Clerk of Courts  
100 East 5th Street  
Canton, SD 57013

Re: In the Matter of the Request by Xcel Energy  
for a Determination of its Territory Boundaries  
Civ. 01-0163

Dear Ms. Fossum:

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

Very truly yours,

Rolayne Ailts Wiest  
Special Assistant Attorney General

RAW:dk  
Enc.



# South Dakota Public Utilities Commission



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

March 20, 2001

Mr. Robert A. Christenson  
Attorney at Law  
Christenson Law Office, P.C.  
412 West 9th Street  
Sioux Falls, SD 57104

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

Re: In the Matter of the Request by Xcel Energy  
for a Determination of its Territory Boundaries  
Clv. 01-0163

Dear Counsel:

Enclosed each of you will find a copy of a Chronological Index and Alphabetic Index in the above captioned matter. This is intended as service upon you by mail.

Very truly yours,

Rolayne Allts Wiest  
Special Assistant Attorney General

RAW:dk  
Enc.

Capital Office  
Telephone (605) 773-3200  
Fax (605) 773-3800

Investigation  
Telephone (605) 773-3200  
Fax (605) 773-3235

Consumer Matters  
(605) 218-1782

TTY Through  
South Dakota  
(605) 773-1133

Internet Website  
www.puc.sd.gov

Jim Berg  
Chairman

Tom Peterson  
Vice Chairman

Public Information  
Communications

William Michael J.  
Executive Director

Debra Datt

Michael P. DeLoach

Ken Carlson

Kevin E. Cooney

Christopher M. Deane

John Edwards

Michael M. Feltz

Michael Fiedler

Thomas R. Fowey

Eric D. Gandy

Greg Gillingham

Tom Hilly

Mark Hilly

Tom Hilly

IN THE MATTER OF THE REQUEST BY XCEL )  
 ENERGY FOR A DETERMINATION OF ITS )  
 TERRITORY BOUNDARIES )

CHRONOLOGICAL INDEX

CIV. 01-0163

NO	DATE	CHRONOLOGICAL INDEX	PAGE NUMBER
1	9/15/00	Letter from Jim Wilcox to William Bullard	1
2	9/20/00	Commission Order for and Notice of Hearing	2-3
3	9/20/00	Commission Weekly Filings	4
4	9/29/00	Xcel's Hearing Brief, Including Cover Letter	5-20
5	10/9/00	E-mail from Dave Gardes to Rolayne Ailts Wiest	21
6	10/10/00	Transcript of Hearing, Including Exhibits	22-293
7	10/16/00	Brief of Southeastern Electric Cooperative, Inc., Including Cover Letter	294-559
8	10/20/00	Xcel's Reply Brief, Including Two Cover Letters	560-568
9	11/9/00	Commission Findings of Fact and Conclusions of Law; Notice of Entry of Order	569-571
10	12/8/00	Petition to Reconsider or in the Alternative Petition to Review, Including Cover Letter	572-577
11	12/8/00	Affidavit of Robin M. Eich	578-585
12	12/8/00	Certificate of Service	586
13	12/20/00	Opposition to Petition to Reconsider, Including Cover Letter	587-590
14	1/17/01	Commission Order Denying Petition to Reconsider or Review	591-592

IN THE MATTER OF THE REQUEST BY XCEL )  
 ENERGY FOR A DETERMINATION OF ITS )  
 TERRITORY BOUNDARIES )

ALPHABETICAL INDEX  
 CIV. 01-0163

NO	DATE	ALPHABETICAL INDEX	PAGE NUMBER
11	12/8/00	Affidavit of Robin M. Eich	578-585
7	10/16/00	Brief of Southeastern Electric Cooperative, Inc., Including Cover Letter	294-559
12	12/8/00	Certificate of Service	586
8	11/9/00	Commission Findings of Fact and Conclusions of Law; Notice of Entry of Order	569-571
14	1/17/01	Commission Order Denying Petition to Reconsider or Review	591-592
3	9/20/00	Commission Order for and Notice of Hearing	2-3
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4	9/29/00	Xcel's Hearing Brief, Including Cover Letter	5-20
9	10/20/00	Xcel's Reply Brief, Including Two Cover Letters	560-568

CERTIFICATE OF SERVICE  
CIV. 01-0163

I hereby certify that copies of Chronological Index and Alphabetical Index were served on the following by mailing the same to them by United States Post Office First Class Mail, postage thereon prepaid, at the address shown below on this the 20th day of March, 2001.

Mr. Robert A. Christenson  
Attorney at Law  
Christenson Law Office, P.C.  
412 West 9th Street  
Sioux Falls, SD 57104

Mr. David A. Gerdes  
Attorney at Law  
May, Adam, Gerdes & Thompson LLP  
P. O. Box 180  
Pierre, SD 57501-0160

---

Rolayne Ailts Wiest  
Special Assistant Attorney General  
South Dakota Public Utilities Commission  
500 East Capitol  
Pierre, SD 57501