

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

IN THE MATTER OF THE COMPLAINT)
FILED BY XCEL ENERGY REGARDING)
A VIOLATION OF THE TERRITORY LAW) **COMPLAINT**
BY SOUTHEASTERN ELECTRIC)
COOPERATIVE, INC.)

COMES NOW Northern States Power doing business as Xcel Energy and complains of a violation of the Territory Law (SDCL § 49-34A-59) by Southeastern Electric Cooperative, Inc.

1. The parties do not agree on a service territory boundary in southeast Sioux Falls.
2. The area in question is known as the “Whispering Woods Addition.” The territory lies in northern Lincoln County just east of Southeastern Drive in Sioux Falls in Section 7 of Township 100 North, Range 49 West - Springdale Township.
3. Xcel Energy alleges that the territorial boundary is along the midpoint of the distance between 69th Street and 57th Street.
4. Upon information and belief, Southeastern Electric Cooperative believes the territorial boundary is ½ of a mile north of 69th Street.
5. Xcel Energy and Southeastern Electric Cooperative have a territorial agreement on file in the Commission office dated January 28, 1976. That agreement also includes two exhibits. Exhibit “A” to the 1976 agreement consists of a map depicting the territorial boundaries between Xcel Energy and Southeastern Electric Cooperative. Exhibit “B” to the 1976 agreement contains a description of those boundaries. The last sentence of the top paragraph on page three of the contract specifies that “the map shall in all respects be conclusive proof of the assigned service area of each utility.” Xcel Energy alleges that the map clearly depicts the territorial boundary to be a line equidistant between 69th Street and 57th Street.
6. The Commission adjudicated a matter very similar to this in 2001 a few miles to the west. In that case both the Commission and Circuit

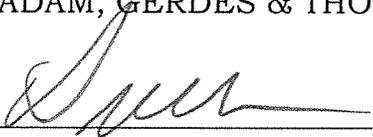
Court held that the map was the controlling authority and that the territorial boundary is the midpoint between the northern and southern border of the section.

7. The northernmost tier of sections in Lincoln County is not square miles. These sections are rather approximately $\frac{3}{4}$ of a Mile from north to south. Use of terms like the "south quarter mile line" and the "half mile line" in exhibit B of the contract cause a conflict with the map of exhibit A of the contract as the lines drawn on the map of exhibit A are drawn along the midpoint between 69th Street and 57th Street, one half of the distance between 69th Street and 57th Streets.
8. A territory exchange approved in docket EL09-021 was inadvertently based on a territory line $\frac{1}{2}$ of a mile north of 69th Street rather than the midpoint of the section as per the 1976 agreement. That 2009 agreement also contradicted the legal descriptions of Exhibit B of the 1976 agreement. Regardless of the 2009 docket, the 1976 agreement stands. Xcel does not wish litigate that case but also does not consider that case to control this matter. The 1976 agreement controls.

Whereupon, Xcel Energy requests that the commission hold a hearing within 15 days and issue its decision as provided by law.

Dated this 21 day of September, 2011.

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